

Coroner, Duties of in Burial of Dead. Paupers, Burial of.  
Coroner. Poor, Burial of. Commissioners, Power to Con-  
tract with Coroner. Contract, for Burial of Dead.

It is within the power of the county commissioners to contract for the burial of the poor who die in the county, and such contract may be made with the person who at the time is the county coroner of such county.

October 27th, 19'4.

Hon. C. R. Tisor,  
County Attorney,  
Miles City, Montana.

Dear Sir:

I am in receipt of your letter submitting the question:

"Whether or not a duly elected coroner, who is a licensed undertaker and embalmer, can furnish caskets and burial supplies and perform embalming services and collect from the county in poor cases the same rates that he would receive from private citizens?"

The question as to the amount paid for the service indicated in the inquiry must be left to the judgment of the county commissioners, if such commissioners have the right to contract at all. The amount received by the undertaker and embalmer from private citizens for like service does not necessarily fix the amount which the county must agree to pay.

Under the provisions of Section 2054, Revised Codes, as amended by Chapter 29, Laws of 1909, it is the duty of the county board to contract with someone for the support and maintenance of the poor, etc., "and the burial expenses." This section including the phrase "and the burial expenses" perhaps has reference to persons who are committed to the care of the contractor, but as we know there is a large class of poor who receive aid in some form from the county, who are not sent to the poor farm or placed under the direct care of the contractor. Section 2059, Revised Codes, provides for the care and burial of strangers who are found sick or who die within the county, but there is still another class of poor, that is, those who are not strangers, and who either have no relatives chargeable with their burial, or whose relatives are unable to give them decent burial. It is as to these latter two classes that the inquiry is directed. Section 8364, makes it a misdemeanor for any one on whom the duty of burial is imposed by law to neglect to discharge that duty, but in case of one who is not a stranger, and whose people, if he leaves any, are not able to pay the burial expenses, a question might arise,—on whom is the duty imposed by law. This class is not included specifically within the provisions of Section 2059, for that relates only to non-residents, that is, strangers. Section 8364, Revised Codes further provides that the person charged with the duty of burying a deceased person "is entitled to the custody of such body." Section 3066, Revised Codes, makes it the duty of the county coroner "to decently inter the body

of the deceased," when an inquest is held, provided no other person takes charge of the body, but suppose a body is found, or someone meets death under suspicious circumstances, the coroner is immediately notified and takes jurisdiction of the body for the purpose of inquiring into the cause of the death, the coroner in such case has the absolute jurisdiction over the body. If he holds a formal inquest then, under Section 3066, he must give the body decent burial, unless someone else claims it, but suppose he does not hold a formal inquest, and no one else claims the body,—what does he do with it? It would seem that it is still his duty, under the provisions of Section 3066, to see that the body has decent burial, and that the expenses thereof are a proper charge against the county. It is unquestionably the duty of the county to see that all poor persons who cannot otherwise receive a decent burial are decently interred, and the expense thereof, shall be borne by the county. A county can only act through its agents, servants and employees. The burial of dead bodies is a duty which must be promptly discharged. It does, therefore, seem, that it is only good business judgment that the county should designate someone to discharge this duty. It has been held by this department that the same person may act as physician and coroner.

Opinions Attorney General, 1906-08, p. 12.

Neither Section 368, nor Section 371, Revised Codes, prohibit.

Opinions Attorney General, 1908-10, pp. 37-38.

I am, therefore, of the opinion that it is a proper exercise of power for the county board to contract with someone for the burial of the pauper dead, who do not come within the class named in Section 2054, as said Section is amended, and while it may be improper for the board to contract with the coroner as coroner, yet the fact that the person with whom such board does contract is the coroner will not prohibit the contract being made. He should be contracted with, if at all, as an individual, and not as a county official.

Yours very truly,

D. M. KELLY,  
Attorney General.