

Coroner—Mileage—Per Diem—Fees.

A coroner is not entitled to per diem for inquiring into the cause of deaths when no inquest is held.

Under section 12381, R. C. M. 1921, a coroner must hold an inquest in the specific cases mentioned in the statute. He may, however, exercise a reasonable discretion in determining whether there is reasonable ground to suspect that death has been occasioned by the act of another by criminal means.

J. S. Connors, Esq.,
Coroner, Broadwater County,
Townsend, Montana.

October 3, 1927.

My dear Mr. Connors:

You have requested my opinion whether a coroner may charge per diem at the rate of \$5.00 for services rendered in inquiring into the cause of deaths where no inquest is held.

This question received consideration by this office in an opinion which you will find in volume 9 Opinions of Attorney General, page 296. The conclusion reached was that in the absence of any statute authorizing the coroner to charge such per diem, he may not legally do so. I agree with the conclusion reached in the opinion above referred to.

As to your second inquiry, section 12381 reads as follows:

“When a coroner is informed that a person has been killed, or has committed suicide, or has died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he must go to the place where the body is, cause it to be exhumed if it has been interred, and summon not more than nine persons, qualified by law to serve as jurors, to appear before him, forthwith, at the place where the body of the deceased is, to inquire into the cause of the death.”

You will note that the statute is mandatory and says that the coroner must in the cases mentioned in the statute, summon a coroner's

jury for the purpose of inquiring into the cause of the death. In case a coroner is informed that a person has been killed, or has committed suicide, there is apparently no ground for the exercise of any discretion on his part, and it is my opinion that he must hold an inquest as directed by the statute.

When, however, the coroner has been informed that a person has died "under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means", it is my opinion that the statute contemplates that the coroner shall exercise a reasonable discretion in determining whether or not the facts brought to his attention are sufficient to afford reasonable ground for the suspicion indicated in the statute. In such case he may, in my opinion, decide whether or not to hold an inquest, but he is compelled to hold an inquest, if reasonable grounds to suspect a homicide by the act of another by criminal means are presented.

Very truly yours,

L. A. FOOT,
Attorney General.