

Opinion No. 55**County Commissioners—Claims—County Coroners—Physicians—Autopsy.**

HELD: It is entirely within the discretion of the board of county commissioners whether they approve or reject any claim presented to them. A county coroner, a practicing physician, may employ another physician to assist in performing an autopsy, and the board of county commissioners may allow a claim for such physicians' services if it is satisfied that the performing of the autopsy did not exceed the bounds of reasonable discretion.

January 31, 1933.

You have requested an opinion from this office on the following matters:

1. What discretion has the Board of County Commissioners to allow or disallow claims.
2. May a County Coroner, a practicing physician, call in another physician to assist in performing an autopsy?

Section 4605, R. C. M. 1921, provides for the presentation and allowance of claims by the Board, and Section 4610 provides for an appeal when a claim is disallowed. In this connection your attention is also called to section 9035

which applies in case of the rejection by the Board of County Commissioners of any claim presented to them. The Supreme Court of Montana held in **Greeley v. Cascade County**, 22 Mont. 580, p. 586, that one might follow the provisions of 4610 in case a claim was rejected by the Board of County Commissioners or he might proceed under section 9035 which is referred to in that opinion as section 517 in the Code of Civil Procedure.

It is the opinion of this office that either course may be pursued in case a claim is rejected and it is also the opinion of this office that it is entirely within the discretion of the Board of County Commissioners whether they approve or reject any claim presented to them. The Board of County Commissioners is the chief executive power of a county and their discretion in such matters is practically unlimited, subject always, of course, to appeal to the courts.

In regard to question number 2, the fees allowed to a coroner are provided for in section 4922, R. C. M. 1921, and there is no particular reference made to any fees to be allowed the coroner for an "investigation" and in anything that the coroner undertakes to do he should be governed by section 12381, R. C. M. 1921, and section 12381 is to be construed in connection with 4848, R. C. M. 1921.

Just what the coroner's duties are in regard to autopsies and the calling in of additional physicians to assist in such autopsy does not seem to have been dealt with in Montana. In **Clay County v. Thornton**, 119 S. W. 246, the court said: "A coroner does not exceed his authority in employing more than one physician to make an autopsy." And in **Sandy v. Board of Commissioners**, 87 N. E. 131, the court held as follows: "The power to hold an autopsy in connection with inquests must be exercised within some reasonable presumption that death resulted from violence. * * *"

The coroner, of course, should use discretion as to when an autopsy is necessary and the rule is very generally applied that the expense of an inquest should not be incurred unless there is reasonable grounds for assuming that the law has been violated or there has been a crime committed.

The general intent running through these decisions and sections should govern the Board of County Commissioners in dealing with any claims presented by the coroners.

It is, of course, always within the discretion of the Board of County Commissioners to allow or reject a claim by a coroner or anyone else for services rendered and if at any time the coroner appears to have exceeded the bounds of reasonable discretion it is the duty of the Board of County Commissioners to reject the claim and put a claimant to the necessity of showing the merits of his bill.