

Opinion No. 109.**County Coroners—Fees—Investigation—Inquests.**

HELD: If an investigation into a sudden or violent death is a part of an inquest the coroner may be allowed his fee, but not otherwise.

May 24, 1935.

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Yesterday Dr. Otto G. Klein made inquiry concerning right of coroner to receive fees for investigations when no inquest has been held. Some aspects of the question appear not to have been considered and it seems advisable to issue an opinion covering these points.

I find that a number of years ago Wellington D. Rankin, then Attorney General, issued an opinion to the effect that the county coroner is not authorized to charge per diem for going to the place where he is called to investigate the cause of death without holding an inquest. (9 Opinions of

Attorney General 296). This opinion was agreed to by Attorney General Foot in 1927. (12 Opinions of Attorney General 141).

These opinions rest upon the rule that unless there is express statutory authority for the payment of official fees such fees cannot be paid, and since no statute provides for any fee for a coroner other than upon the days engaged in holding inquests, no other fee can be allowed. There is, of course, a distinction between mileage and fees.

While this condition may work hardship upon the coroner, I do not see how the situation can be changed until the legislature provides for compensation while making investigations as well as while holding inquests.

I might add that the coroner is not required to go to the place of death and investigate every sudden death which occurs. He is required to go only when he " * * * 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, * * *" and, apparently, such requirement makes it mandatory that whenever these conditions appear the coroner must hold an inquest. (Section 12381, R. C. M. 1921.) This 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 a reasonable ground for the suspicion mentioned in the statute. (12 Opinions of Attorney General 141).

Depending on the facts of the case, an investigation may, or may not, be a part of an inquest. If it be a part of the inquest, then the fee may be allowed. (10 Opinions of Attorney General 199).