

Opinion No. 152.**Coroner—Autopsy.**

HELD: That a county coroner may not have an autopsy of post mortem performed unless an inquest is to be held.

2. A coroner if also a duly licensed and qualified physician may himself perform an autopsy and charge the county the customary fee therefor.

3. The county coroner may not employ an assistant and may not charge the county therefor.

4. The board of county commissioners pass on the reasonableness of the charge for the performance of the autopsy.

September 9, 1937.

Mr. Harold K. Anderson
County Attorney
Helena, Montana

My dear Mr. Anderson:

You have asked:

1. Is the county coroner authorized to hold a post mortem or autopsy when no inquest is held, and if so may he charge a fee for the same?

2. Is the county coroner authorized, when he deems it necessary, to employ an assistant in conducting a post mortem or autopsy, and recover from the county for the service of such assistant?

3. What, if any, are the limitations in the amount charged for an autopsy or post mortem?

1. In response to your first inquiry, the regulations regarding coroners inquests are set forth in Chapter 109 of the Penal Code, R. C. M. of 1935. Section 12381 thereof provides in part that:

“ * * * When a coroner is informed that a person has been killed or has committed suicide or has died under such circumstances as to afford reasonable grounds to suspect that his death has been occasioned by the act of another by criminal means * * *”

an inquest must be held. By this section it is mandatory that a coroner hold an inquest where a person has been killed or committed suicide, but in the third case he is vested with discretionary powers to determine whether or not there are reasonable grounds to suspect the commission of a criminal act, and he is justified in holding an inquest only when he has reasonable grounds to suspect that a crime has been committed.

2 Opinions of Attorney General 200;
Morgan v. San Diego County, 86
Pac. 720.

In the exercise of such discretion a preliminary investigation may be necessary. This was recognized by the legislature when they provided by Chapter 9 of the Laws of 1937, that the coroner be allowed a fee for making an investigation relative to a death. But the performance of an autopsy or post mortem is not a proper part of such investigation. It is the duty of every public officer to have regard for the feelings and sensibilities of grief stricken persons and avoid adding anguish to their bereavement by the cutting and mutilation of the bodies of their loved ones. So, unless a coroner has reasonable grounds to believe that a crime has been committed, no autopsy should be performed. Of course, if such grounds do exist, an inquest would be necessary by Section 12381, and an autopsy would be a proper part thereof.

Furthermore, Section 11036 R. C. M., 1935, provides that:

“The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it, except that in the case in which an inquest is required to be held upon a dead body by a coroner, such coroner is entitled to its custody until such inquest has been completed.”

Which would indicate, by the familiar rule of *expressio unius*, that the only time the coroner could take the body and perform an autopsy was when an inquest was held. There is language in 13 Corpus Juris 1260 and in some of the cases there cited indicating that a coroner may order an autopsy as a part of his preliminary investigation, but an examination of those cases will show that in each one an inquest was actually held and the court was confronted with the question of allowing a physician's fee for performing the autopsy.

Therefore, it is my opinion that the only time a coroner is authorized to order the performance of an autopsy is when an inquest is actually held. (See also 10 Opinions of Attorney General 159.)

Having so held, a discussion of the second part of your first question is foreclosed. However, it might be well to indicate that it is not part of the

coroner's duty as such to perform post mortems or autopsies.

Section 12383, R. C. M., 1935, provides that a coroner

"* * * May summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of death. * * *"

The question of fees in such an event was taken up by Attorney General Galen in 1, Opinions of Attorney General, 171, when he cited:

"If a physician is called in to perform an autopsy as part of the inquest, the coroner would be entitled to no extra compensation for his presence at such autopsy, as he would simply be performing one of his duties in holding the inquest. Of course, if the coroner is a duly licensed practicing physician qualified to perform an autopsy, and does perform the same, in addition to his duties as coroner in holding an inquest, he would be entitled to the customary charges of a physician for performing an autopsy."

Nor do Section 444 and 447 R. C. M., 1935, conflict.

2 Opinions of Attorney General 12;
5 Opinions of Attorney General 651.

2. In response to your second question, a county coroner is not authorized to employ an assistant. (10 Opinions of Attorney General 199.) Nor is the coroner authorized to call in more than one physician to make a post mortem examination.

13 Corpus Juris 1251;

In Re: Coroners Inquests, 1 Pa. Co. Ct. 14.

Likewise, if the coroner himself performs the post mortem as provided above, he would come under the same regulations and would be forbidden to have an assistant and to ask the county to pay for the services of same.

3. It is the coroner's duty to avail himself of professional aid and skill, and his contract will bind the county to the payment of a reasonable compensation for making the post mortem examination.

Young v. College of Physicians and Surgeons, 32 Atl. 177;

31 L. R. A. 540 and cases cited.

The law does not fix any specific fee for performing an autopsy, so that the reasonableness of a charge for the same is to be determined by the board of county commissioners in passing on the bill for such services.

St. Francis County v. Cummings, 18 S. W. 461.

The \$2100.00 limitation set forth in Chapter 9 Laws of 1937 applies only to fees and clerical help required, and does not apply to the legitimate charges incurred by the coroner in the performance of his official duties. Such charges as mileage, payment of witnesses, and hiring of physicians are not classed as fees and do not come within the limitation.