

Opinion No. 66.**County Coroner—Inquest—Fees.**

HELD: 1. Where several persons have been killed by the same cause the coroner in his discretion may hold one inquest over the several bodies, or separate inquests.

2. Where one inquest is held over several bodies the coroner is entitled only to the statutory fee of \$5.00 per day or fraction thereof.

3. A stenographer is entitled to compensation for preparing a copy of the transcript of testimony whether it is subsequently used in a trial or not.

May 17, 1939.

Mr. H. B. Landoe
County Attorney
Bozeman, Montana

My Dear Mr. Landoe:

You have asked:

"1. In case of accident resulting in more than one death, is the Coroner authorized to make an investigation into the cause of death of each of the deceased persons?"

"2. Where inquests are held, is the Coroner bound to hold one inquest inquiring into the death of all of the deceased persons, or may he hold an inquest over the body of each person?"

"3. Where a jury is called and an inquest held to determine the cause of death of several persons involved in one accident, may the Coroner charge for inquest for each of said deceased persons, or is he limited to the charge of Five Dollars as if there were only one person involved?"

"4. Where testimony is taken by a stenographer at an inquest and copy of the transcript is requested

by the office of the County Attorney and the Coroner, or either, may said stenographer make a charge for said copy, even though said transcript is not used for the purpose of a trial in a criminal proceeding later on?"

1 and 2. Questions 1 and 2 can be considered together. "The coroner must hold an inquest as provided by Section 12381 of the penal code." (Section 4848, Revised Codes of Montana, 1935.)

"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." (Section 12381, R. C. M., 1935.)

The coroner then is required to inquire into the cause of death of each of the deceased persons, but where several persons have been killed by the same cause the coroner, in his discretion, may hold one inquest over the several bodies or separate inquests. (13 C. J. 1250; 5 Encyc. of Pl. & Pr. 41; Francis v. Tioga Co. 8 Pa. Co. Ct. 163; County of St. Clair v. Bollman, 15 Ill. App. 279.) In the exercise of such discretion the coroner should not act capriciously or arbitrarily. The county should not be required to pay fees for separate inquests if the cause of death can be determined at one inquest over the several bodies. But whether or not separate inquests are necessary is for the coroner to determine and he is presumed to have acted in the public interest and in good faith in exercising his discretion.

3. Section 4922, Revised Codes of Montana, 1935, as amended by Chapter 9, Laws of 1937, prescribes the fees of the coroner. He is entitled to receive:

"For each day or fraction of day engaged in making an investigation relative to a death, whether an in-

quest is later held or not, the sum of five dollars (\$5.00), provided that not more than one day's fees shall be charged for making an investigation in any one case, except in counties of the first, second and third class;

"For each day or fraction of day engaged in holding an inquest, five dollars (\$5.00), provided, that not more than two day's fees shall be charged for holding an inquest in any one case."

The salient and controlling words in this section are "for each day or fraction of day." The words "investigation relative to a death" are explanatory as indicative of the kind of investigation the coroner is authorized to make. The same is true of the second paragraph. The controlling words are "for each day or fraction of day" and the word "inquest" is descriptive of the work authorized.

An analogous case is *County of St. Clair v. Bollman*, 15 Ill. App. 279. There twenty-six people were killed in a convent fire. By statute members of the coroner's jury were allowed a per diem of \$1.00 per day. The question was whether a juror was entitled to compensation for six days' service at \$1.00 per day or whether he should receive \$156.00 on the theory that he was engaged for six days in an inquiry on each of the twenty-six bodies. The court said, (p. 281) "The interpretation claimed by the plaintiff would, necessarily, lead to absurd and unjust consequences. In the case before us, had there been but one victim, plaintiff would have received one dollar a day, but there being twenty-six victims he claims twenty-six dollars per day, and had there been a hundred victims would have claimed a hundred dollars per day. In such latter case, which is not at all an improbable or impossible one, from the burning of a theater or other place of public resort, the cost to the county of a six days' inquest by a jury of six men, would amount to the sum of \$3,600 for jurors' fees alone."

I am of the opinion that the coroner is limited to a fee of \$5.00 per day or fraction thereof whether he is holding an inquest over one or many bodies.

4. By Section 12386 the testimony of the witnesses examined before a coroner's jury must be reduced to writ-

ing. The stenographer taking such testimony must be paid except in counties of the first class where a stenographer is a salaried employee. (Section 4855, Revised Codes of Montana, 1935.) If in addition a copy of the evidence is furnished to the county attorney, the stenographer is to be compensated for that service. It is immaterial whether the transcript was ever actually used in a trial. The only consideration is that the stenographer has performed the service requested and upon completion of that service is entitled to compensation therefor.