

**Opinion No. 16.****Coroner—Fees—Inquests.**

Held: The coroner is not entitled to a \$5.00 fee for issuing a death certificate, but, if, in the exercise of his discretion, he determines an investigation is necessary by reason of the provisions of Section 12381, Revised Codes of Montana, 1935, and he makes such investigation, he is entitled to a fee of \$5.00 per day, plus mileage.

February 27, 1943.

Mr. J. J. McIntosh  
County Attorney  
Rosebud County  
Forsyth, Montana

Dear Mr. McIntosh:

You state the coroner of your county has presented a bill against the county for a five dollar fee for issuing a death certificate, and, in addition, has charged five cents per mile for the trip going to and from the deceased. You ask the opinion of this office whether this is a legal charge against the county.

Chapter 9, Laws of 1937 provides a coroner is entitled to receive five dollars for each day or fraction of day engaged in making an investigation relative to a death, whether an inquest is later held or not. There is a limitation therein as to the number of days for which fees shall be charged, except in counties of the first, second and third class, and it is also provided the coroner shall be paid for each mile actually traveled in the performance of any duty.

Prior to the enactment of this chapter, it had been held by this office the coroner was not entitled to charge a fee in the absence of an inquest and a separate fee could not be charged for an investigation; in other words, the only fee allowable was for an inquest. (Report and Official Opinions of Attorney General, Volume 9, page 296, Volume 10, page 199, Volume 12, page 141.)

Section 12381, Revised Codes of Montana, 1935, originally enacted as Section 2790, Penal Code of Montana, 1895, provides when the coroner is informed a person has been killed, or has committed suicide, or has died under such circumstances as to afford a reasonable ground to suspect 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 a coroner's jury to inquire into the cause of death.

As pointed out in Report and Official Opinions of Attorney General, Volume 12, 141, the duties imposed by Section 12381 are mandatory, and when the information conveyed to the coroner is that a person has been killed or committed suicide, an inquest must be held; but when the information conveyed to the coroner covers circumstances affording a reasonable ground to suspect the death has been occasioned by the act of another by criminal means, the coroner has a discretion to determine whether the facts are sufficient to afford a reasonable ground for suspicion, and he is only compelled to hold an inquest when reasonable grounds to suspect a homicide by criminal means are presented.

However, in exercising his discretion as indicated in the opinion just cited, it must be assumed the coroner will make some investigation to determine the need of an inquest, and undoubtedly it was by reason of this fact the legislature provided in Chapter 9, Laws of 1937, that the coroner should be paid fees for such investigation.

In Volume 18, Report and Official Opinions of the Attorney General, page 17, this office gave its opinion as to the effect of Chapter 9, above, and pointed out that often an investigation will obviate the necessity of an inquest and the added cost incident thereto.

It would appear that in the enactment of Chapter 9, Laws of 1937, the legis-

lative thought was that, whenever the coroner made an investigation, by reason of the duty cast upon him by Section 12381, Revised Codes, above, he would be entitled to a fee and mileage, even though he determined an inquest was not necessary; further, that the coroner should make the determination of the need of investigation from the facts communicated to him covering any death. If he determined investigation was necessary, he should make such investigation.

Consequently, it is my opinion the coroner is not entitled to a five dollar fee for issuing a death certificate, but, if, in the exercise of his discretion, he determines an investigation is necessary by reason of the provisions of Section 12381, Revised Codes of Montana, 1935, and he makes such investigation, he is entitled to a fee of five dollars per day, plus mileage.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General