

Opinion No. 174.

**Coroner—Autopsy, Authority to order
—Inquest.**

Held: 1. Coroner may order autopsy in inquest cases, when in his judgment it is necessary to determine cause of death.
2. Body of person dying without attending physician may be removed without order of coroner, unless coroner has taken charge, but cannot be removed in violation of Chapter 44, Laws of 1943.

February 10, 1944.

Mr. J. Miller Smith
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Smith:

Your office has requested an opinion as to whether the coroner has authority to order an autopsy and if a body may be moved where there was no physician attending without orders from the coroner.

In answer to the first part of your inquiry, regarding the ordering of an autopsy, I wish to call your attention to the fact that Sections 12381 to 12393, Revised Codes of Montana, 1935, give the coroner authority to hold inquests under certain circumstances but do not expressly mention authority to order autopsies. However, said Section 12381 does authorize him as follows:

“... to inquire into the cause of death.”

Section 12383 authorizes him:

“... and may summon a surgeon or physician to inspect the body, and give a professional opinion as to the cause of the death.”

Section 12385 provides:

“After inspecting the body and hearing the testimony, the jury must render their verdict, and certify the

same by an inquisition in writing, signed by them and setting forth who the person killed is, and when, and by what means he came to his death ...”

Where statutes give the coroner such authority and the jury on the inquest is required to determine by what means the deceased came to his death, the majority of courts hold that the coroner is authorized to order an autopsy, if it is necessary to determine the cause of death. (See in this respect 13 Corpus Juris 1250.)

It is to be noted, however, that no authority is given or implied, to hold autopsies, other than in connection with inquests. (See Opinion No. 152, Vol. 17, Report and Official Opinions of the Attorney General, pages 172 and 173.)

In answer to the second portion of your inquiry, your attention is called to the fact that the statutes hereinbefore cited pertaining to holding inquests, and Sections 4848 to 4857, Revised Codes of Montana, 1935, pertaining to coroners generally, authorize the coroner to take charge of bodies, only under such circumstances as are set forth in Section 12381, which reads as follows:

“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.”

The California Court in *Morgan v. San Diego County*, 86 Pac. 720, construed an identical statute as follows:

“We think the killing should be shown to have been sudden and unusual, and of such a nature as to indicate a possibility of death by the hand of the deceased, or through the instrumentality of some other person.”

It is to be noted the statutes and the case cited do not even intimate the deceased cannot be moved without order from the coroner.

Section 13 of Chapter 44, Laws of 1943, pertaining to death certificates specifically providing for securing of death certificates of persons who died without the attendance of medical care conclusively forecloses the idea that a body cannot be moved in such instances without the order of the coroner. Said section provides as follows:

“Thereupon the funeral director or person in charge of interment shall notify the appropriate local registrar, if the death occurred without medical attendance, or the physician last in attendance fails to sign the death certificate. Then the local registrar may complete the certificate (referring to death certificate necessary to secure burial permit) on the basis of information received from relatives of the deceased or others having knowledge of the facts. If the circumstances suggest that the death or stillbirth was caused by other than natural causes, the local registrar shall refer the case to the coroner for investigation and certification.”

In light of the statutes and law on this matter, it is my opinion that where an inquest is held, if the coroner feels that it is necessary to hold an autopsy in order to determine the cause of death, he has authority to order that one be had. It is also my opinion that where a person dies without attendance of a physician, the body of the deceased may be moved without the consent of the coroner, provided, however, if the coroner has been called on the case, and in his opinion it is a proper case for an inquest, then the body cannot be removed except under his order, nor can the body be removed in violation of Chapter 44, Laws of 1943.

Sincerely yours,
R. V. BOTTOMLY
Attorney General