

Opinion No. 88

Coroners, Powers, Duties and Fees of—County Commissioners, May Fill Vacancy in Office of County Coroner.

- Held:**
1. A coroner is entitled to a fee for investigating a death even though he does not hold an inquest on the death, unless he is paid a salary in lieu of fees.
 2. "Investigation" as used in the statute providing for the coroner's fees means an inquiry into the cause of death.
 3. The coroner cannot charge \$5.00 per day for the work he does relating to keeping his records, answering the telephone and answered the inquiries of friends and relatives of a deceased person.
 4. The coroner may not receive compensation for investigations performed by him after an inquest.
 5. Coroners, in other than first, second, or third class counties, are limited to one day's fee for an investigation.
 6. If a coroner conducts investigations into separate and unrelated deaths he may charge for two investigations on the same day. If two or more deaths are the result of one accident, the general rule should be that the coroner may only charge for one investigation into the cause of death, however it is foreseeable that a situation could arise that would require more than one investigation and in such case the coroner could charge for two investigations when the deaths result from the same accident.
 7. The coroner must conduct and complete his investigation within a reasonable length of time.
 8. The coroner has power under statute to appoint deputies to serve without compensation.
 9. The County Commissioners are empowered to appoint a person to fill a vacancy in the office of County Coroner only when such office is vacated for one of the reasons set forth in Section 59-602, Revised Codes of Montana, 1947.
 10. The Board of County Commissioners may disallow the claim of a coroner for an investigation or an inquest only if the

action of the Coroner is conducting such investigation or inquest was fraudulent or so arbitrary as to amount to a clear and manifest abuse of discretion.

February 2nd, 1950.

Mr. Robert J. Nelson
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Nelson:

You have requested my opinion upon the following questions relating to the office of County Coroner:

1. Is a Coroner entitled to a fee for investigating a death even though he does not hold an inquest on the death?
2. What does the word "investigation" mean as used in Section 25-236, Revised Codes of Montana, 1947?
3. Can the Coroner collect \$5.00 per day where the work he does relates to keeping his records, answering the telephone and answering the inquiries of friends and relatives of a deceased person?
4. May the Coroner receive compensation for investigations performed by him after an inquest?
5. Is the Coroner limited to one day's fee for each investigation?
6. If a Coroner conducts two investigations on the same day can he charge \$5.00 for each investigation?
7. Is there a time limit on an investigation?
8. Does the Coroner have the power to appoint deputies?
9. Under what conditions are the Commissioners empowered to appoint an acting Coroner?
10. In passing on the Coroner's claim can the County Commissioners disallow any part of it on the ground that in their opinion the inquest or autopsy or investigation which forms the basis for the claim was unnecessary?

As you stated in your opinion the first question is expressly answered by statute. Section 25-236, Revised Codes of Montana, 1947, (formerly Section 4922, Revised Codes of Montana, 1935) provides that for each day or fraction of day engaged in making an investigation relative to a death, whether an inquest is later held or not the Coroner is entitled to receive a fee of \$5.00. Nothing in this opinion relating to payment of fees shall apply to counties wherein the Coroner is paid

a salary as set forth in Section 25-236, for such salary is in lieu of all fees.

By way of answer to question two, you state that since the word "Investigation" is not given any special meaning, it follows that it is to be given its ordinary meaning. In the case of *Lukert v. Eldridge*, 49 Mont. 46, 139 Pac. 999, the court defined the word "Investigate" as follows:

"To follow up step by step by patient inquiry or observation; to trace or track mentally; to search into; to inquire and examine into with care and accuracy; to find out by careful inquisition."

In the light of the above quoted language and as a practical matter I agree with your conclusion that as used in Section 25-236, *supra*, "Investigation" should be construed to mean an inquiry into the cause of a death.

Your answer to question number three is that the work relating to the keeping of records and answering the telephone and answering the inquiries of friends and relatives of a deceased person is not compensable, and that in your opinion the word "Investigation" as used in the statute relates to inquiries into the cause of death and that once the cause of death has been determined, the matter is closed insofar as further fees or compensation are concerned. The following passage from 18 C.J.S., coroners, Section 28, at page 306 lends support to your opinion:

"A Coroner whose only compensation for the discharge of his official duties consists of fees, and on whom certain duties are imposed by law for which no compensation is provided, cannot recover for services in the performance of such duties on the basis of a quantum meruit, or on any other basis, the conclusive presumption being that compensation for such services is covered by the allowance made for the performance of other official acts for which fees are prescribed."

Therefore I agree with you that the only fees a Coroner may collect are those enumerated by Section 25-236, Revised Codes of Montana, 1947. Also see Section 25-202, Revised Codes of Montana, 1947.

The fourth question queries whether or not a coroner may receive compensation for investigations performed by him after an inquest. You state that in your opinion no compensation should be allowed in such a case because the purpose of the inquest is to determine the cause of death and the Coroner's fee, as you construe it, is a fee for investigation into the cause of death. You further state that once the cause has been established, whether by inquest or otherwise it would seem to follow that any further investigation which the Coroner makes is not compensable.

A case in point on this question is *Morgan v. San Diego County*, 3 Cal. App. 454, 86 Pac. 720, wherein the California Court construed

a statute identical with Section 94-201-1, Revised Codes of Montana, 1947, (providing when the Coroner is to summon a jury), and held that a coroner could not collect fees for holding a second inquest in the absence of proof that the first inquest was unlawful. At page 732 of the Pacific Reporter the court ruled as follows:

"We hold that one inquest, duly and lawfully held in accordance with the law upon one body; is sufficient, and he who undertakes to hold a second inquest has the burden to show that the first inquest for some reason was not lawful; and unless he does that he should not be permitted to receive any fees for his services."

In accord with the holding of the above quoted case are the following decisions: *People v. Budge*, 4 Parker's Criminal Reports 519, (New York); *Board of Commissioners of Fountain County v. Van Cleve*, 19 Ind. App. 643, 49 N.E. 978. The reason for not allowing further investigation or a second inquest is well set out in the latter opinion at page 980 wherein the court spoke as follows:

"The sole purpose of a Coroner's inquest is to have an immediate investigation into the commission of a supposed crime by some officer especially charged with such duty. The whole proceeding is merely preliminary, and the object is to determine whether it is probable that a crime has been committed by an examination of the facts while they can be most easily had. Whatever may be his conclusion, it can neither convict nor acquit any one of the crime. There is no reason why the requirements of the law cannot be satisfied with one inquest, made upon view of the body, and no question is made but that the first inquest was legally conducted."

Since the established rule is that a second inquest into the cause of death is not permissible, I agree with your holding that a Coroner may not be compensated for investigations performed after an inquest has been held.

As you state in your opinion the fifth question is expressly answered by statute. Section 25-236, Revised Codes of Montana, 1947, provides as follows in part:

"The Coroner is entitled to receive and collect for his own use the following fees:

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

Opinion Number 14, Volume 18, Report and Official Opinions of Attorney General, also passed upon this question and held that the number of days' pay in investigations in counties of first, second, and

third class is unlimited. You inform me that Cascade County is a County of the third class and therefore I agree with your opinion that the Coroner can charge for as many days as is necessary for the investigation.

Question six queries whether a Coroner can charge \$5.00 for each investigation if he conducts two investigations on the same day. You state that in your opinion there are two possibilities, the first where there are two separate and unrelated deaths, and that in this case the Coroner should be able to charge \$5.00 for each investigation even though he conducts them concurrently. The second situation is where the deaths are related as in a traffic accident where several people are killed and in this case you state that the Coroner should be able to charge for only one investigation because that is all that is required even though there are several deaths.

Opinion Number 66, Volume 18, Report and Official Opinions of Attorney General dealt with a problem somewhat analogous to that raised by question six. In that opinion the question was whether the Coroner could charge a fee of five dollars for the inquest of each of several persons killed in the same accident. The then Attorney General rules as follows:

"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 . . . 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."

I agree with the reasoning of the above quoted opinion and I believe that it applies with equal force to the question as to the number of investigations that may be conducted. Therefore I conclude that when the Coroner investigates two separate and unrelated deaths he may charge for two investigations on the same day. When the deaths are related as in a traffic accident the general rule should be that one investigation will suffice for such an accident, however it is possible that in certain uncommon factual situations more than one investigation will be necessary and in such case the Coroner may exercise his discretion as to the investigations and if more than one investigation is necessary he may charge for two investigations conducted on the same day.

Question seven queries whether or not there is a time limit on an investigation. Your opinion is that you can find no statute providing that a Coroner must begin an investigation after a death and complete it within a certain time thereafter and thus you conclude there is no

time limit on an investigation. You also state that it is to be presumed that a public official, such as a Coroner, will faithfully perform the duties of his office, and since there is no provision as to time, a Coroner should begin his investigations and complete them within a reasonable time. What is a reasonable time would vary with each situation.

I agree with your conclusion that the only time limitation upon the conducting of an investigation is that it should not be for an unreasonable length of time.

Question eight queries whether the Coroner has the power to appoint deputies. As you say in your request this question is specifically answered by statute. Section 16-2409, Revised Codes of Montana, 1947, provides as follows:

"Every County and Township Officer, except County Commissioner and Justice of the Peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office, but no compensation or salary must be allowed any deputy except as provided in this code."

Question nine queries as to the conditions under which a Board of County Commissioners is empowered to appoint an acting Coroner. You have answered this question as follows:

"Section 16-3405 provides that if the office of the Coroner is vacant or he is absent or unable to attend the duties of his office, his duties may be discharged by any Justice of the Peace of the County. If the office of the County Coroner, therefore, is declared vacant, it is our opinion that the Commissioners can designate a Justice of the Peace to fill his office. We do not think that the Commissioners should do this where the Coroner is merely absent or unable to attend for any reason because the deputies have the power to perform the duties of the Coroner. Section 59-404, R.C.M., 1947 expressly provides that a deputy possesses the powers and may perform the duties attached by law to the office of his principal. There would, therefore, be no necessity for the Commissioners to appoint an acting Coroner where the Coroner had previously appointed deputies and he himself was unable to act through temporary absence or illness."

It is my opinion that the County Commissioners may only appoint a person to fill the office of Coroner when such office is vacant for any of the reasons enumerated in Section 59-602, Revised Codes of Montana, 1947. The events which cause a vacancy to occur, as set forth in Section 59-602, are as follows: death of incumbent; his insanity; his resignation, his removal from office; his ceasing to be a resident of the State; his absence from the State beyond the period allowed by law; his ceasing to discharge the duty of his office for the period of three consecutive months, except when prevented by sickness or absent by permission of the Legislative Assembly; his conviction of a felony or of any offense involving moral turpitude or a violation of his official du-

ties; his refusal or neglect to file his official oath or bond within the time prescribed; and the decision of a competent tribunal declaring void his election or appointment. Only in the above quoted instances may the County Commissioners act to appoint a person to fill a vacancy in the office of Coroner. Under Section 16-3405, Revised Codes of Montana, 1947, the Justice of the Peace may discharge the duties of Coroner when the office is vacant or he is absent or unable to attend. The operation of such statute does not depend upon any order or action by the County Commissioners. Under Section 16-1021, Revised Codes of Montana, 1947, the County Commissioners have jurisdiction and power to fill by appointment all vacancies that may occur in County, township or precinct offices, except in the office of County Commissioner. When the Commissioners act pursuant to this authority they are not appointing an acting Coroner but are appointing a Coroner to fill a vacancy created as set forth in Section 59-602, supra. Such an appointment is entirely separate and distinct from any occasion wherein a Justice of the Peace serves as acting Coroner, and therefore I conclude that the only time the Commissioners may act to appoint a Coroner is when a vacancy occurs as contemplated by statute.

Your concluding question asks whether the County Commissioners may disallow any part of the Coroner's claim on the ground that in their opinion the inquest or autopsy or investigation which forms the basis for the claim was unnecessary. Once again I quote from your answer to this inquiry as follows:

"It is our opinion that they cannot do this. The office of County Coroner and the office of County Commissioner are separate and distinct and if the Commissioners were allowed to reject claims upon the ground that the work performed was unnecessary they would be usurping the powers of the County Coroner. Once again, it is to be presumed that the Coroner will faithfully and impartially execute the duties of his office. If the Commissioners do not think that the work done by the Coroner is necessary, their remedy should be a proceeding to remove the Coroner from office on the ground of incompetence or fraud, etc.; but if the work has been done, it should be paid for in any event and it is our opinion that whether or not there should be an inquest or autopsy or investigation into a death is a matter entirely within the discretion of the Coroner."

In addition to the statement you have set forth I would like to add the following authorities: Opinion Number 16, Volume 20, Report and Official Opinions of Attorney General ruled that a Coroner should make the determination of the need of an investigation from the facts communicated to him covering any death and if he determined investigation was necessary, he should make such investigation. In 28 C.J.S., Coroners, Section 28, Page 306, it is stated that with respect to the Coroner's discretion in holding inquest, a Coroner will not generally be denied compensation for holding an inquest in the absence of a showing of bad faith.

It is my opinion that a Board of County Commissioners may disallow the claim of a Coroner for an investigation or an inquest only if the action of the Coroner in conducting such investigation or inquest was fraudulent or so arbitrary as to amount to a clear and manifest abuse of discretion.

It is therefore my opinion that your questions should be answered as follows:

1. A Coroner is entitled to a fee for investigating a death even though he does not hold an inquest on the death, unless he is paid a salary in lieu of fees.
2. "Investigation" is used in the statute providing for the Coroner's fee means an inquiry into the cause of death.
3. The Coroner cannot charge \$5.00 per day for the work he does relating to keeping his records, answering the telephone and answering the inquiries of friends and relatives of a deceased person.
4. The Coroner may not receive compensation for investigations performed by him after an inquest.
5. Coroners in other than first, second, or third class counties are limited to one day's fee for an investigation.
6. If a Coroner conducts investigations into separate and unrelated deaths he may charge for two investigations on the same day. If two or more deaths are the result of one accident, the general rule should be that the Coroner may only charge for one investigation into the cause of death, however it is foreseeable that a situation could arise that would require more than one investigation and in such case the Coroner could charge for two investigations when the deaths result from the same accident.
7. The Coroner must conduct and complete his investigation within a reasonable length of time.
8. The Coroner has power under statute to appoint deputies to serve without compensation.
9. The County Commissioners are empowered to appoint a person to fill a vacancy in the office of County Coroner only when such office is vacated for one of the reasons set forth in Section 59-602, Revised Codes of Montana, 1947.
10. The Board of County Commissioners may disallow the claim of a Coroner for an investigation or an inquest only if the action of the Coroner in conducting such investigation or inquest was fraudulent or so arbitrary as to amount to a clear and manifest abuse of discretion.

Very truly yours,
Attorney General.
ARNOLD H. OLSEN,