

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

2. If Question No. 1 above is answered in the affirmative, should the fee allowed be a charge against that portion of the coroner's budget providing for payment of expenses, or should the same be charged against the coroner's account for fees?

3. Is the county coroner authorized to conduct an investigation into the death of an individual after a death certificate has been filed and, if so, may he charge a fee for the same?

Chapter 172, Laws of 1949, limits the right to perform autopsies and, so far as is pertinent to this discussion, reads thus:

"The right to perform an autopsy upon, or to dissect the dead body of a human being, or make any post-mortem examination involving dissection of any part of such body, shall be limited to the following cases, viz.: . . . (b) or to cases where a coroner is authorized to hold an inquest upon a dead body, as provided by Section 12381, Revised Codes of Montana, 1935 (Section 94-201-1, R.C.M., 1947) and any code section continuing authority for such inquest and then only to the extent such coroner may authorize dissection or autopsy. . ."

Section 94-201-1, R.C.M., 1947, referred to in Chapter 172, supra, provides 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 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."

Opinion No. 59.
Autopsy—Autopsy Fees—Coroners—
Duties of Coroners—Inquests—
Investigations—Coroners’
Budget.

HELD: 1. A county coroner may cause an autopsy to be performed prior to the holding of a contemplated inquest, provided that within his discretion he has reasonable grounds to suspect that a death has been occasioned by a criminal act and there are no other means of ascertaining the cause of death.

2. A coroner's contract for the performance of an autopsy binds the county to the payment of a reasonable compensation for the making of the examination.

3. A county coroner is authorized to conduct an investigation into the death of an individual, after a death certificate has been filed, and may charge a fee for same.

January 30, 1954.

Mr. Ted James
 County Attorney
 Cascade County
 Great Falls, Montana

Dear Mr. James:

You have requested my opinion on the following questions:

In other words, if any of the conditions enumerated in Section 94-201-1, supra, exist, then the coroner is authorized to hold an inquest and, according to the plain language of Chapter 172, supra, such condition precedent having been met, an autopsy may be caused to be performed. Chapter 172, supra, leaves little doubt that the sole power to order dissection or autopsy vests in the coroner. Inasmuch as the coroner has the sole power and authority to order an autopsy and may do so when any of the conditions as set forth in Section 94-201-1, supra, are met, it would serve little purpose to say that the holding of the inquest must precede the autopsy. I take it sufficient that an inquest is contemplated and the coroner has reasonable grounds to suspect that a person has met death by the act of another by criminal means. As was stated in the recent case of *Blackburn v. Pepper*, 35 Del. Co. 32:

"Where death is sudden or violent, or of such a suspicious character or the cause of death is of a suspicious nature and character, it is the duty of the coroner to cause an investigation of the facts concerning the death, and to have made an autopsy if the facts of the case so demand, and if he finds that an inquest is not necessary to certify such fact and receive the same fees as allowed for such service when followed by an inquest."

A case involving, in part, a consideration of statutes similar to Montana's Chapter 172, supra, and Section 94-201-1, supra, that of *Darcy v. Presbyterian Hospital in City of New York*, 202 N.Y. 259, 95 N.E. 695, stated:

"It may be upon the trial of this case the defendant (coroner) will be able to show that the decedent died in a suspicious and unusual manner, and that there was reasonable ground to suspect that his death was occasioned by criminal means. If so it was its duty to notify the coroner, and it then became the duty of that officer to investigate, either in person or by his physician, the clinical history of the case, and if he then has grounds to suspect criminal agency had caused death, to hold the body for autopsy. . . ."

See also *Gurganious v. Simpson*, 213 N.C. 613, 197 S.E. 163; *Gray v. Southern Pac. Co.* (Cal.) 68 Pac (2d) 1011.

The question as to whether or not an autopsy should be ordered before the jury of inquest is impanelled has long been recognized as a debatable one. *Weinmann. A Compendium of the Statute Law of Coroners and Medical Examiners in the United States*, p. 124.

Certainly there are cases to the effect that an autopsy is not proper to aid a coroner in determining whether an inquest should be held. However, a study of such cases gives no indication that the coroner had any authority to investigate, his functions being solely that of calling an inquest.

Montana law contemplates an investigation of death being made by the coroner prior to the calling of an inquest. (Section 25-236, R.C.M., 1947, as amended; 23 Opinions of Attorney General 232, No. 88.) In this respect, the language as contained in *Kingsley v. Forsyth* (Minn.) 257 N.W. 95, expresses in plain language the true value of an autopsy prior to an inquest:

". . . If upon such investigation he (coroner) deems the death accidental, that is 'occasioned by casualty' he cannot hold an inquest. An autopsy may be the surest and most satisfactory way of determining that the death was accidental; and, since the statute provides that the coroner 'shall order an autopsy when and where he deems proper,' the conclusion is inescapable that the coroner may, as an aid to his investigation, order an autopsy. It may also be said that an autopsy may demonstrate the death to have been 'occasioned by casualty' in which case no inquest could lawfully be had. * * * However that may be, when a violent, mysterious, or accidental death occurs in the county . . . the coroner must take charge, investigate the death . . . and if in order to properly investigate the cause of death he deems an autopsy needful he is authorized to order it."

The case represents the better reasoning on the subject.

It is therefore my opinion that a county coroner is authorized to cause an autopsy to be performed, prior to

the holding of a contemplated inquest. provided that within his discretion he has reasonable grounds to suspect that the death has been occasioned by a criminal act and there are no other means of ascertaining the cause of death.

In answer to your second question, Section 25-236, R.C.M., 1947, as amended by Chapter 211, Laws of 1951, sets forth the fees to which a coroner is entitled, and sets a limitation on the total amount of the fees which may be collected. Since it is not required that the coroner be a physician, it is inconceivable that the legislature ever intended that the fees provided in Section 25-236, supra, were to be resorted to for autopsy charges. At the same time, the legislature, as previously pointed out, did envisage autopsies being performed under the direction of the coroner. In the case of Allegheny County vs. Watt, 3 Pac. 462, the county was held responsible for the payment of a physician called by the coroner to make a post-mortem examination. The court said:

“ . . . To the taking of every inquisition **super visum corporis** . . . a **post-mortem** examination is indispensable; and as the fees of the coroner would be inadequate . . . either the public purse must pay for it, or the administration of public justice must suffer for want of it. And why should not the county pay for it? . . . ”

Since the laws fails to fix a specified fee for the performing of an autopsy, it is my opinion that the coroner's contract binds the county to the payment of a reasonable compensation for making the examination.

Your third question is whether a coroner may cause an investigation to be made after a death certificate has been filed. The coroner is a public elective officer created by Article XVI, Section 5, of the Montana Constitution. The coroner is vested with broad discretionary powers, and in the exercise of that discretion is presumed to act within the law. (23 Opinions of Attorney General 232, No. 88.)

Section 69-512, R.C.M., 1947, requires a death certificate be filed prior to interment of a body. Section 94-201-1, supra, provides in part that the

coroner “. . . must go to the place where the body is, cause it to be exhumed if it has been interred . . . ” It therefore follows and it is my opinion that a county coroner is authorized to conduct an investigation into the death of an individual, after a death certificate has been filed, and may charge a fee for same.