

VOLUME NO. 36

Opinion No. 49

ATTORNEYS — Right to counsel at inquests; COUNTY CORONERS — Right to counsel at inquests; INQUESTS — Witnesses' right to counsel; Sixth Amendment, United States Constitution; Article II, Section 15, Article II, Section 24, Montana Constitution; Sections 95-1001 and 95-1002, Revised Codes of Montana 1947.

HELD: 1. A witness at a coroner's inquest may be accompanied and advised by counsel; however, this counsel does not have the right to participate in the inquest or cross-examine other witnesses.

2. Counsel for a witness at a coroner's inquest does not have the right to comment on the coroner's instructions to the jury.

January 8, 1976

Mr. Patrick M. Springer
County Attorney
County of Flathead
Kalispell, Montana 59901

Dear Mr. Springer:

You have requested my opinion on the following questions:

1. Whether a counsel for a youth has the right of inquiry in a coroner's inquest where the youth has become not only the subject of an investigation, but has reached the accusatory stage in one portion of the proceedings?
2. If this right of inquiry exists, may counsel present comments to a coroner's jury following the coroner's instructions?

For the purposes of this opinion, I do not believe a distinction should be made between a youth or an adult. The 1972 Constitution insured all fundamental rights for those under 18, unless specifically precluded by law. Article II, Section 15. One of these rights is the right to counsel. Article II, Section 24.

In order to answer your questions, the nature of a coroner's inquest must be examined. In *State v. Allison*, 116 Mont. 352, 355, 153 P.2d 141, 142 (1944), the court stated:

A coroner's inquest has been broadly defined as a tribunal charged with the duty of investigating crimes and, more specifically, as an investigation into the cause of death by a coroner with the aid of a jury. . . . Although an inquest is essentially a **criminal proceeding**, at least from the time when the felonious homicide is established, nevertheless, it is not a trial involving the merits, but rather a preliminary investigation. (Emphasis added) 18 C.J.S. Coroners, §14, p. 293.

Decisions from other jurisdictions are consistent in that they hold that inquests are investigatory in character rather than accusatory. **State ex rel. Schuller v. Roraff**, 39 Wis. 2d 342, 350-351, 159 N.W.2d 25 (1968); **Kennedy v. Justice of the District Court of Dukes County**, 356 Mass. 367, 252 N.E.2d 201 (1969). Inquests are separate from any criminal proceedings which may eventually be brought. **People v. Coker**, 104 Cal. App. 2d 224, 225, 231 P.2d 81, Cert denied 342 U.S. 894, 96 L.Ed.2d 670, 72 S.Ct. 203 (1951); **State v. Burnett**, 357 Mo. 116, 206 S.W.2d 345 (1947).

In Montana, no criminal consequences necessarily follow a coroner's inquest. Any subsequent criminal proceeding is brought independently by the county attorney. This is also the case in other jurisdictions. **Smalls v. State**, 101 Ga. 570, 571, 28 S.E. 981, 40 L.R.A. 369 (1897); **Commonwealth ex rel. Czako v. Maroney**, 412 Pa. 448, 450, 194 A.2d 867 (1963).

Keeping in mind that the overwhelming weight of authority holds that a coroner's inquest is investigatory rather than criminal in nature, we must now examine when the right to counsel exists. Article II, Section 24 of the 1972 Montana Constitution gives the accused the right to counsel in **all criminal prosecution**.

Section 95-1001, R.C.M. 1947 states in part:

Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding and must be asked if he desires the aid of counsel. . . .

These Montana provisions give the right to counsel only in a criminal proceeding. Similarly, the Sixth Amendment to the United States Constitution guarantees that "in all criminal prosecutions, the accused shall ... have the assistance of counsel for his defense".

Since a coroner's inquest is not a trial or any part of a criminal proceeding, a witness, even though he may be under suspicion, is not entitled to representation by counsel as a matter of constitutional law. **People v. Coker, supra**. Nor is there an inherent right in any witness at an inquest to cross-examine other witnesses or to present evidence of his own. **Aetna Life Ins. Co. v. Milward**, 118 Ky. 716, 726, 82 S.W. 364, 68 L.R.Q. 285; **State v. Griffin**, 98 S.C. 105, 111, 82 S.E. 254 (1914); **Kennedy v. Justice of the District Court of Dukes County, supra**.

There is no doubt that one who is under suspicion for a crime should be informed of his constitutional rights before he is questioned at an inquest. **State**

v. Allison, supra. Witnesses also may be accompanied and advised by their counsel while testifying at an inquest. **Kennedy v. Justice of the District Court of Dukes County, supra.** This should not be confused, however, with the right to active representation, such as cross-examination of other witnesses, or commenting on the evidence. In the **Kennedy** case, **supra**, the court held that the person holding the inquest may permit cross-examination if he feels it would be helpful. This is within the discretion of the person holding the inquest, however, and is not a right of counsel.

THEREFORE, IT IS MY OPINION:

1. A witness at a coroner's inquest may be accompanied and advised by counsel; however, this counsel does not have the right to participate in the inquest or cross-examine other witnesses.
2. Counsel for a witness at a coroner's inquest does not have the right to comment on the coroner's instructions to the jury.

Very truly yours,

ROBERT L. WOODAHL
Attorney General