

VOLUME NO. 37

OPINION NO. 87

COUNTY CORONERS - Impaneling jury, discretion; REVISED
CODES OF MONTANA, 1947 - Sections 93-1301, 93-1604, 95-803.

HELD: The coroner has the power to select jurors by any
reasonable mode suitable to perform his duty to
impanel a coroner's jury.

10 November 1977

John G. Winston, Esq.
Silver Bow County Attorney
Silver Bow County Courthouse
Butte, Montana 59701

Dear Mr. Winston:

You have requested my opinion on the following question:

May the same persons serve on every coroner's jury, or must there be some means of randomly selecting such jurors?

You state you've observed that in the few instances coroner's inquests are held in Silver Bow County, the same jurors serve on each inquest.

Section 95-803, R.C.M. 1947, provides when an inquest is to be held "the coroner must summon a jury of not more than nine (9) persons, qualified by law to serve as jurors." Juror qualifications are specified in section 93-1301. Section 93-1604 provides that jurors may be summoned orally by the coroner. The statutes are otherwise silent concerning the qualifications, and means of selecting, coroner's jurors.

The Legislature has not provided specific rules governing coroner jury selection. In absence of legislative guidelines, the following rule applies:

[w]hen an official duty is imposed and no mode of exercise is prescribed, the one who is required to perform such duty may adopt any mode reasonably suitable to carry the duty imposed into effect.

State ex rel. School District No. 8 v. Lensman, 108 Mont. 118, 128, 88 P.2d 63 (1939). The manner of selecting coroner's jurors is therefore within the coroner's discretion. There is no authority to limit or to influence that exercise of discretion by imposing an arbitrary procedure.

THEREFORE, IT IS MY OPINION:

The coroner has the power to select jurors by any reasonable mode suitable to perform his duty to empanel a coroner's jury.

Very truly yours,

MIKE GREELY
Attorney General