

Note from the Attorney General's Office:

1923 Op. Att'y Gen. No. 23-0037 was overruled in part by 1963 Op. Att'y Gen. No. 63-0470.

of a public office is determined by the nature of the public service to be performed in connection with the territorial limits of the authority to act in an official capacity", and since the public service to be performed is to be performed for the whole county, "whoever is lawfully authorized to perform this public service for the county at large is a county officer." *State v. Groom*, supra, p. 9; *State v. O'Brien*, 95 O. S., 166.

We are thus brought face to face with the question whether or not the general assembly has the authority to create a county office and provide that its incumbent shall be appointed, instead of elected by the electors of the county.

Section 1, Article X, Ohio Constitution, provides that

"The general assembly shall provide, by law, for the election of such county and township officers, as may be necessary."

"It is clear from this provision of the constitution," said the Supreme Court in *State v. Groom*, supra, page 10, "that the legislature of this state cannot create a county office without providing by law for the *election* of the officer who is to discharge the duties of that office. That being clear, upon what theory then can the general assembly of the state create official duties to be performed for the whole county and attach the same to offices the incumbents of which are not elected by the electors of the county for which these services are to be performed. Section 1 of Article X of the constitution gives the electors of a county the right to say who shall administer its local affairs, and any attempt by the legislature to clothe an individual not *elected* by a constitutional majority of the electors of a county with such authority would be a clear invasion of this constitutional right."

In this connection attention is also called to the more recent case of *State v. O'Brien*, supra. In that case the court held that where the state seeks to exercise its sovereign power of taxation through the agency of a county office, the statute creating the office and providing for the selection of the incumbent must conform to the constitutional provisions with respect to such officers, one of which is Section 1, Article X, Ohio Constitution, herein above quoted.

You are therefore advised that the plan specifically outlined in your letter and discussed in this opinion, cannot be carried out.

Respectfully,
C. C. CRABBE,
Attorney-General.

37.

CORONER—TO DRAW FEE NOT NECESSARY TO FIND DEATH CAUSED BY UNLAWFUL MEANS—JURISDICTION LIMITED TO COUNTY—REQUIRED TO HOLD INQUEST.

SYLLABUS:

1. *In order to draw his fee, the coroner is not bound in all cases to find the death was caused by unlawful means. The circumstances, however, must be such as to make a reasonable man suspect that unlawful means have been used.*

2. *Jurisdiction of coroner limited to county. Inquest to be held by coroner in whose county body is found. The body is "found" in the county where it is*

ascertained to be. Coroner cannot follow body into another county and there hold an inquest.

3. *Where person is injured by unlawful act in one county and is removed to another county and there dies, as a result of such unlawful act, the coroner in the county in which such person dies has jurisdiction and is required to hold inquest.*

COLUMBUS, OHIO, January 31, 1923.

HON. E. STANTON PEARCE, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your communication of recent date, in which you inquire:

1. "Under this statute (section 2856, General Code of Ohio), if the coroner in good faith believes, from the information received, that the death was caused by unlawful or suspicious means, but finds throughout the course of his investigation that there was no unlawful act done, is the coroner entitled to his usual and lawful fees?"

2. "If a person is unlawfully killed in this county, but before the coroner can reach the body and arrange an inquest, the body is removed into another county, can the coroner follow the body into the other county and there hold his inquest, or if one was mortally wounded, by unlawful means, in this county and was removed into another county, where he died as a direct result of the unlawful act, can the coroner hold an inquest where the person died?"

3. "If one receives mortal injuries in one county and is removed into another county, where he dies as a direct result of said injuries, which coroner has jurisdiction over the body and which coroner has the right to hold an inquest?"

In your first question you ask whether a coroner is entitled to his usual and lawful fees when he in good faith believes from information received that death was caused by unlawful means but his investigation shows that there was no unlawful act done.

The authority for a coroner to hold an inquest is found in section 2856, General Code of Ohio, which reads:

"When informed that the body of a person whose death is supposed to have been caused by unlawful or suspicious means has been found within the county, the coroner shall appear forthwith at the place where the body is, issue subpoena for such witnesses as he deems necessary, administer to them the usual oath, and proceed to inquire how the deceased came to his death, whether by violence from any other person or persons, by whom, whether as principals or accessories before or after the fact, and all circumstances relating thereto. The testimony of such witnesses shall be reduced to writing, by them respectively subscribed except when stenographically reported by the official stenographer of the coroner, and, with the finding and recognizances hereinafter mentioned if any, returned by the coroner to the clerk of the court of common pleas of the county. If he deems it necessary, he shall cause such witnesses to enter into recognizance, in such sum as may be proper, for their appearance at the succeeding term of the court of common pleas of the county to give testimony concerning the matter. The coroner may require any and all such

witnesses to give security for their attendance, and if they or any of them neglect to comply with his requirements, he shall commit such person to the prison of the county, until discharged by due course of law. A report shall be made from the personal observation of the corpse; statements of relatives, of other persons having adequate knowledge of the facts, and such other sources of information, as may be available or by autopsy if such autopsy is authorized by the prosecuting attorney of the county."

Section 2857 of the General Code of Ohio provides:

"The coroner shall draw up and subscribe his finding of facts in writing. If he finds that the deceased came to his or her death by force or violence, and by any other person or persons, so charged, and there present, he shall arrest such person or persons, and convey him or them immediately before a proper officer for examination according to law. If such persons, or any of them, are not present, the coroner forthwith shall inform one or more justices of the peace, and the prosecuting attorney, if within the county, of the facts so found, in order that the persons may be immediately dealt with according to law."

The above sections were known as sections 1221 and 1222 Revised Statutes, and were construed in *State ex rel. v. Bellows*, 62 O. S., 307, where it is held:

"Within the meaning of section 1221, Revised Statutes, providing for inquests by the coroner, a dead body 'is found within the county' when it is ascertained to be within the county; and death is supposed to have been caused by violence whenever the coroner from observation or information has substantial reason for believing or surmising that death was caused by unlawful means."

On page 310, *supra*, the court says:

"It is thus indicated that the inquest is intended to aid in the detection of crimes and in the punishment of those who perpetrate them. Construed with this purpose in view, and with reference to their natural meaning, the sense in which the words and phrases of the statute are used should not be the subject of serious doubt. A death 'caused by violence' is a death caused by unlawful means, such as usually call for the punishment of those who employ them. A body 'is found' within the county when it is ascertained by any means that it is within the county. 'Death is supposed to have been caused by violence' whenever from such observation as he may be able to make, and from such information as may come to him, the coroner is for reasons of substance led to surmise or think that the death has been so caused. To hold that within the contemplation of the statute death cannot be supposed 'to have been caused by violence' if persons other than the coroner may know that it was so caused, would defeat the purpose of the statute, since murderers and their accomplices always know that the death of their victims were so caused.

It is the duty of the coroner to hold an inquest and to perform the other duties enjoined upon him by these sections of the statute whenever a dead body is found within his county and he knows or may reasonably believe that death was caused by unlawful means. For such services he is entitled to the compensation which the defendants propose to pay."

It was said in a former opinion rendered by this department under date of June 19, 1913, found in Reports of the Attorney General for that year, Vol. 2, page 1284, that:

"In order to draw his fee the coroner is not bound, in all cases, to find that the death was caused by unlawful means. The circumstances, however, must be such as to make a reasonable man suspect that unlawful means had been used. The coroner must act in good faith upon the information given him and must reasonably suspect that the violence has been used, through unlawful means, although upon investigation he might find that no wrong had been in fact done."

In answer to your first question, it is my opinion that it is the duty of the coroner to hold an inquest and to perform the other duties enjoined by these sections of the statute whenever a dead body is found within his county and he knows, or may reasonably believe, that death was caused by unlawful means. For such services he is entitled to his usual and lawful fees and that the same is not governed by the outcome of his inquest.

Your second question is whether a coroner can follow a body into another county and there hold an inquest, when a person has been unlawfully killed in one county and the body is removed to another county before the coroner can reach the body and arrange an inquest; or if one was mortally wounded by unlawful means in one county, and was removed into another county, where he died as a direct result of the unlawful act, can the coroner hold an inquest where the person died?

By virtue of section 2856, General Code of Ohio, above quoted, "when informed that the body of a person, whose death is supposed to have been caused by unlawful or suspicious means has been found within the county, the coroner shall appear forthwith at the place where the body is * * *" and hold an inquest. The above quoted section would seem to confine the jurisdiction of the coroner to the county for which he is elected and to a body found within the county.

In construing section 2856, General Code of Ohio, in *State ex rel. v. Bellows*, supra, the court held:

"The body 'is found within the county' when it is ascertained to be in the county."

The court then approves the opinion of the circuit court in the same case as reported in 8 Cir. Dec., 376. On page 379 of the opinion, Shearer, C, J., says:

"We are not impressed with the contention that the word 'found', as used in section 1221, Rev. Stat., is to be understood in the restricted sense of 'discovered' or 'found by accident or search', but rather in the broader sense of being present within the coroner's jurisdiction.

"A dead body may be discovered within the county by accident, its existence not previously having been suspected; it may be discovered by search—its existence being known, but its whereabouts unknown; it may have been struck dead as in this case, in the presence of a multitude, and the assailant may be known. In all such cases, the body is 'found'. In Illinois 'found' is treated as synonymous with 'lying'. Revised Statutes of Ills., 1883."

As to the county in which the inquest should be held, whether in the county in which the accident occurred or where the death occurred, the following is found in 13 Corpus Juris, page 1248:

“An inquest is properly held in the territory of the coroner in whose jurisdiction the body is found, without regard to where the death occurred or where the injury was received.”

A number of cases are cited in support of this statement, among them Moore v. Box Butte County, 78 Nebr., 561, in which it was held:

“Jurisdiction to hold an inquest is conferred upon a coroner by his finding and custody in his county of the body of a person who has apparently come to his death by violent, mysterious or unknown means, and such jurisdiction is not defeated by the mere fact that the violence was inflicted or the death occurred in another county.”

In the case of Pickett v. Erie County, 3 Pa. Co., p. 23:

“An inquest is properly held in the county where the body is found, without regard to where the death occurred.”

The court, on page 74, said:

“The evident meaning and intent of the law is that the coroner’s inquest should be held where the body is found. It must be on view of the remains, and of course it would not be held in their absence, although an inquest should be summoned and made where the death occurred.”

The statutes considered in these cases are much alike our own, and in answer to your second question I am of the opinion that in such cases as you refer to the coroner could not follow the body into the county in which it had been removed and there hold an inquest.

Your third question is, which coroner has jurisdiction over the body and which coroner has the right to hold an inquest in cases where one receives mortal injuries in one county and is removed to another county where he dies as a direct result of said injuries? I take it that you mean in cases where the injuries are the result of an unlawful act. In answer to your third question it is my opinion, from a consideration of the statutes and cases cited under them in the discussion of your second question, that the coroner in whose county the body is found has jurisdiction over the same and should hold the inquest.

Respectfully,

C. C. CRABBE,

Attorney-General.

38.

MOTHERS’ PENSION LAW—JURISDICTION TO ADMINISTER VESTED EXCLUSIVELY IN JUVENILE COURT—OFFICES COMPATIBLE—HUMANE OFFICER—PROBATE OFFICER OF JUVENILE COURT—ATTENDANCE OFFICER—QUESTION OF FACT.

1. *Jurisdiction to administer the mothers’ pension law is vested exclusively in the Juvenile Court and must be exercised by the judge designated to transact the business of said court.*