

1945

Laws of Missouri Relating to Inquests and Coroners, The

Herbert S. Breyfogle

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Herbert S. Breyfogle, *Laws of Missouri Relating to Inquests and Coroners, The*, 10 MO. L. REV. (1945)
Available at: <https://scholarship.law.missouri.edu/mlr/vol10/iss1/7>

This Article is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

THE LAWS OF MISSOURI RELATING TO INQUESTS AND CORONERS

HERBERT S. BREYFOGLE, M.D.*

It is now one hundred and thirty-seven years since the first territorial laws of Missouri provided for inquests and coroners and thus established an important agency of the government in the enforcement of law and the administration of justice. As originally constituted by law in 1807 the inquest served as a board of inquiry, functioning as a kind of lower court whose sole duty was the hearing of evidence relating to death. It was not a trial court, but merely an official hearing which acquired and appraised evidence that might concern a felony. Even then, the only clear judicial power which the coroner possessed was the issuing of a subpoena. It is worth noting, however, that in the absence of the coroner the law provided that any judge or justice might conduct the proceedings of the inquest.

It is well to remember that in 1807 and for sometime afterwards, the coroner had no effectual assistance from the police or prosecutor or medical profession in administering the duties of the office. Moreover there were probably not more than three hundred deaths a year in the entire territory which might require official action by the coroner. The total population did not exceed twenty thousand; hazards were few and simple. Most of the populace eventually succumbed to acute infectious disease. In such circumstances it was not likely that any question regarding the authority and jurisdiction of the coroner would arise or that there would be any doubt concerning a proper case for the coroner.

At any rate no question of this kind was raised until 1863. The Missouri courts held then that the coroner possessed judicial and discretionary powers. The issue did not appear again for twenty years. In the meantime (1873) the legislature had added a provision that restricted the inquiry of the coroner to deaths from violence, to casualty, and to deaths involving unknown persons and granted to the county court the power to review the official acts of the coroner. In 1884 in view of this limitation the court could no longer answer the question as it had in 1863. As a consequence the author-

*Deputy Coroner, St. Louis County, Pathologist to the St. Louis County Hospital, Instructor in Pathology, Washington University Medical School, Lecturer in Legal Medicine, St. Louis University Medical School.

ity and jurisdiction of the coroner after 1884 declined. There were other reasons why it did so.

The population of the state had increased to nearly three million. Approximately forty thousand deaths occurred annually. An estimated eight thousand deaths each year were likely to require official investigation, of which four thousand were so obscure that the cause of death could only be determined by medical investigation. In 1909 the legislature, recognizing the responsibility of the medical profession in this group of deaths, transferred the matter of their investigation to the health department. By this time the police agencies and the office of prosecutor had expanded and were vitally interested in crime resulting in death. The development of scientific police methods in the urban areas and eventually in the rural areas, combined with the establishment of a state police organization made it clear that the coroner must depend to a great extent on law enforcement officers for evidence. But it was also being made clear that neither the police nor the prosecution were under any obligation to participate in the coroner's proceedings. In fact they could, and did, conduct their investigation without consulting him. Gradually the county prosecutor with the assistance of the grand jury, and the regularly constituted courts of the state and county began to exercise all of the important investigative and non-medical functions of the coroner.

It was becoming apparent, too, that medical participation in determining the cause of death was of paramount importance and needed to be integrated with police investigation and prosecution. Frequently police investigation had to await the results of the medical examination in order to know whether or not a crime had been committed. But the coroner was neither a doctor, nor a prosecutor, nor a criminologist and he had to await the findings of all three. Regardless of its importance, it was not certain whether medical participation in the inquest was authorized by law. Neither the police nor the county prosecutor had any authority to order an autopsy. The legislators had neglected to state clearly whether the coroner might order an autopsy performed either as a part of the inquest or to determine whether an inquest was necessary.

In 1938 the final blow to the authority of the coroner was struck by the courts when it was held that he had no judicial right to order an autopsy. Even when such an examination was held in conjunction with an inquest and in connection with a death properly within his jurisdiction both the coroner

and the physician employed by him assumed a risk for civil damages. This opinion was affirmed in 1941.

The decline in the authority of the coroner could not be ascribed to the courts of Missouri. The questions placed before them could only be interpreted upon the basis of antiquated laws originating one hundred and thirty-seven years before, and preserved almost verbatim. These laws comprised the unsteady foundation upon which the coroner might conduct his office. No significant change had ever been made in any of them, in spite of the fact that the function of the coroner in civil society had been conspicuously altered in a variety of ways. Many laws had been passed without any apparent regard for the fact that the structure upon which they rested was gradually deteriorating.

The effectiveness of the coroner in discharging his official duties has been repeatedly questioned on such grounds before, not only in Missouri but in other states. In 1925 the report of the Missouri Crime Survey severely criticized the coroner system and proposed a number of changes, but no subsequent action resulted. During the Constitutional Convention of 1943-1944 the abolition of the coroner was considered and the adoption of other plans debated.

With this general picture in mind it now remains to examine critically the accumulated laws and official opinions that affect directly or indirectly the function of the coroner and the inquest in Missouri. Such a survey may serve both as a basis for revision of the present system and as a guide to present coroners in discharging their official obligations with a minimum of risk to themselves and with the least possible conflict with other civil officers.

I. THE CORONER

A. *History, General Statutory Provisions, The English System*

Very little is known regarding official inquiry into sudden, violent, obscure or suspicious deaths in Missouri prior to 1807. The United States took formal possession of the Louisiana Territory in 1804 and it is probable that whatever investigation was required before that time was conducted by the police, as it was in France and Spain. In 1805 the Territorial Acts provided that the governor of the territory appoint necessary civil officers within the various districts. The Territorial Acts of 1807 stipulated that a coroner be commissioned by the governor for each district. In this connection nine separate provisions were written for the conduct of the office. These provisions have been carried down to the Revised Statutes of 1939 where they

1945] *LAWS RELATING TO INQUESTS AND CORONERS* 37

are covered in fifteen statutes.¹ In 1812 the government of the territory was reorganized but the provisions regarding the appointment of the coroner were the same as those of 1805. It was further stipulated that the legislature define the duties of all civil officers. The legislature at that time apparently adopted the same laws that were in effect in 1807. In 1815 the common law of England was adopted by the territory.

The coroner remained an appointive official until 1865 when the constitution adopted that year provided for his election. From 1825 to 1885 a number of supplementary acts and statutes were added.² These related primarily to fees, (1843, 1847, 1873, 1885), costs (1845, 1847, 1873), salaries (1873), witnesses, fines, writs, valuables (1885), penalties (1873, 1885), unclaimed bodies, floating bodies (1847), inquests in death from poisoning (1874), the coroner's oath and bond (1825, 1845), and the duty of the coroner of St. Louis County to act as marshall (1855). After 1885 the only addition was the adoption of a schedule of fixed salaries in certain counties.³

The coroner in Missouri is now a constitutional officer who primarily performs ministerial functions.⁴ The office of coroner is an "office under this state" since the elected holder of the office performs duties prescribed by law.⁵ The coroner, however, is not a state officer with official functions and duties coextensive with the boundaries of the state, but a county officer whose jurisdiction is limited to the boundaries of the county in which he is elected.⁶

The coroner is commissioned by the governor and in this manner invested with the title of the office, *prima facie* evidence of his right to the office and the power to exercise its functions.⁷ He cannot be deprived of his right and possession except by due process in the manner prescribed by law.⁸ He is subject to certain penalties and restrictions, enjoys minor immunities, but is not immune from arrest or civil action.

Although his duties are ministerial, for the most part, the coroner may act judicially in determining whether or not an inquest is to be held in cer-

1. MO. REV. STAT. (1939), § 13227 and §§ 13231-13244 incl.

2. MO. REV. STAT. §§ 13228 (1825), 13250 (1843), 13229, 13230, 13251 (1845), 13245, 13246, 13247, 13249 (1847), 13248 (1855), 13252-13257 incl., 13259 (1873), 13258 (1874), 13260-13268 incl. (1885).

3. MO. REV. STAT. (1939) c. 99, art. 4, 5, 9.

4. MO. CONST. 1875, Art. IX, § 10.

5. See State *ex rel.* Zevely v. Hackmann, 300 Mo. 59, 254 S. W. 53 (1923).

6. Cf. State *ex rel.* Harton v. Clark, 320 Mo. 1190, 9 S. W. (2d) 635 (1928).

7. MO. CONST. 1875, Art. V, § 23.

8. See note 7 *supra*.

tain instances; but he cannot presume this magisterial power in respect to the holding of an autopsy or with regard to the guilt or innocence of persons called before the inquest.⁹ While the coroner is free to exercise his judicial power in the calling of an inquest, it is a curious fact that, except in the case of a death without medical attendance where the registrar of deaths believes that death is due to unlawful or suspicious means, there is no specific directive in the statutes requiring any individual, public or private, or any organization to notify the coroner of a death which may require the holding of an inquest.¹⁰

The coroner's proceedings, although they may be held before a jury and a verdict delivered, do not have the status of a court of record.¹¹ The office of the coroner is not included among the courts of record enumerated in the statutes of Missouri, nor is it referred to in the sections of the Constitution of Missouri pertaining to the judicial department.¹² Except insofar as the coroner acts as a magistrate in summoning juries and witnesses, or in issuing writs and in taking testimony under oath, the holding of an inquest does not confer upon the coroner the power of a magistrate as in the duly constituted courts of Missouri.

The coroner possesses certain police powers which he may exercise in a limited way. Thus, he may act to preserve the peace, assume the duties of the sheriff or marshall in special circumstances, pursue and arrest escaped felons, and commit witnesses to jail for refusal to testify or for failure to pay fines.¹³

The English coroner law probably served indirectly as a model for the original Territorial Acts of 1807. By the time the Louisiana Purchase had been concluded, some form of the coroner system was probably in effect in every state in the union. There were and still remain, however, certain important and fundamental differences between the English and Missouri coroner systems. Thus, in England the coroner is not merely a ministerial officer, but the magistrate of a court of record whose powers are judicial and

9. *Patrick v. Employers Mut. Liability Ins. Co.*, 233 Mo. App. 251, 118 S. W. (2d) 116 (1938); *Crenshaw v. O'Connell*, 235 Mo. App. 1085, 150 S. W. (2d) 489 (1941); *Queatham v. Modern Woodmen of America*, 148 Mo. App. 33, 127 S. W. 651 (1910).

10. MO. REV. STAT. (1939), § 9767.

11. *Queatham v. Modern Woodmen of America*, 148 Mo. App. 33, 127 S. W. 651 (1910).

12. MO. REV. STAT. (1939), § 1990; MO. CONST. 1875, Art VI.

13. MO. REV. STAT. (1939) §§ 3882, 13144, 13227, 13248.

discretionary, and may extend beyond the boundaries of his county. The coroner must be a barrister, solicitor, or legally qualified practitioner of medicine of five years' standing in his profession. The coroner's court in England has the status of an inferior judicial tribunal which determine the guilt or innocence of persons brought before it. The coroner in England is immune from arrest. He may act in his official capacity, not only without summoning a jury, but may order that an autopsy be performed in order to determine whether an inquest will be necessary. Certain authorities in England are required to notify the coroner of a death which may require the holding of an inquest, and penalties may arise where any person in the community fails to report a proper case to him. A number of revisions in the law have been made during the past fifty years.¹⁴

B. *Election, Term of Office,*¹⁵ *Qualification*

The coroner is elected every four years (began 1908) and serves until a successor is elected and qualified. The coroner is ineligible to succeed himself. In case of a vacancy, a coroner is to be appointed by the county court for the remainder of the term. Persons appointed to fill such a vacancy remain eligible for the next succeeding term. In the event that a new county is created the governor is to include among his appointees for the county a coroner who shall serve until his successor is elected and qualified.¹⁶

The coroner is not required to demonstrate any special qualifications for election to office. There is no limitation regarding race, color, age, sex, or occupation of candidates for the office of coroner.¹⁷ Whenever the governor of the state appoints a coroner to a new county, the appointee is merely required to be a "suitable person."¹⁸ The coroner must, however, be a citizen of the United States and a resident in the state for one year before entering office.¹⁹ There is no requirement that he be a resident of the county in which he is elected.²⁰ The City of St. Louis is a county according to the meaning of that term as defined by the Missouri Constitution.²¹

14. 7 HALSBURY, LAWS OF ENGLAND, (Hailsham, 2nd ed. 1939).

15. See note 4 *supra*.

16. MO. REV. STAT. (1939), § 13697.

17. MO. CONST. 1875, Art. VIII, § 11; See also note 3 *supra*.

18. See note 16 *supra*.

19. MO. CONST. 1875, Art. VIII, § 10.

20. Opinion, Office of Attorney-General, August 7, 1944.

21. MO. CONST. 1875, Art. IX § 1; State *ex rel.* Beach v. Finn, 4 Mo. App. 347 (1877); Gracey v. St. Louis, 213 Mo. 384, 111 S. W. 1159 (1908); State *ex rel.* Plummer v. Gardner, 290 Mo. 143, 234 S. W. 53 (1921).

In a city or county having a population greater than 200,000 the coroner may not hold a state office and a county or municipal office nor two municipal offices at the same time.²² Before entering on the duties of the office, the coroners must take an oath "to support the Constitution of the United States and of this state, and to demean themselves faithfully in office."²³

The statutes require that the coroner upon his election put up bond of one thousand dollars with sufficient sureties.²⁴ These may be inquired into annually by the county court and if found to be insufficient the coroner may be required to give a new or additional bond satisfactory to the court.²⁵ If the coroner fails to give bond when requested by the county court he shall be removed from office.²⁶ In counties with a population of not less than 200,000 and having less than 400,000 inhabitants the county must pay the cost of the bond required by law of the coroner and other officers.²⁷ In the City of St. Louis the coroner is required to give bond in the sum of ten thousand dollars (\$10,000).²⁸

C. Compensation and Costs

In certain counties the coroner may be assigned a fixed salary in lieu of all fees for his services.²⁹ The first provision for a fixed salary was made by the legislature in 1873 when the county court in counties having more than 100,000 inhabitants was given discretionary power to fix the coroner's salary at not over four thousand dollars (\$4,000);³⁰ the limitations imposed by this statute have been altered in recent years by additional laws affecting counties of certain size as shown in Table I. The salary of the coroner of the City of St. Louis is fixed by ordinance.³¹

In counties not affected by these statutes, a schedule of fees for the coroner is provided.³² Special fees are allowed to a coroner for conducting a post-mortem examination if he is a physician or surgeon.³³ The Constitution of Missouri limits the fees receivable by the coroner to ten thousand

22. MO. CONST. 1875, Art IX, § 18.

23. MO. CONST. 1875, Art. XIV, § 6; MO. REV. STAT. (1939) § 13228.

24. MO. REV. STAT. (1939), § 13228.

25. MO. REV. STAT. (1939), § 13229.

26. MO. REV. STAT. (1939), § 13230.

27. MO. REV. STAT. (1939), § 13535.

28. REV. CODE ST. LOUIS (1926), § 179.

29. See note 2 *supra*.

30. MO. REV. STAT. (1939), § 13259.

31. MO. REV. STAT. (1939), § 15683; REV. CODE ST. LOUIS, (1926), § 186.

32. MO. REV. STAT. (1939), § 13424.

33. MO. REV. STAT. (1939), § 13257.

1945] *LAWS RELATING TO INQUESTS AND CORONERS* 41

dollars (\$10,000);³⁴ statutory provisions further limit these fees to five thousand dollars (\$5,000) after deduction of expenses and salaries but this does not apply to any county of 100,000 inhabitants or more or to the City of St. Louis.³⁵ Fees collected by coroners assigned a fixed salary are to be accounted by him and turned over to the county treasurer.³⁶

The allowance of costs, fees, and expenses is subject to the judicial discretion of the county court.³⁷ In the City of St. Louis the duties of the county court in this connection are performed by the mayor.³⁸ Under certain conditions private citizens may be required to pay the costs, fees, and expenses incidental to the holding of an inquest.³⁹ Where several deaths occur from the same casualty and the coroner is entitled to fees, these can only be allowed on the basis of one examination.⁴⁰

In the City of St. Louis the fees, costs, and expenses as well as the salary of the coroner are regulated by ordinance.⁴¹ In 1943 the total expenses of this office amounted to slightly over fifty thousand dollars (\$50,000). Nearly twenty-five thousand dollars (\$25,000) was paid in salaries to a staff of eleven persons; the balance was paid for special services, of which thirteen thousand dollars (\$13,000) were set aside for post-mortem examinations.⁴²

D. Offices

In counties having not less than 200,000 inhabitants and less than 400,000 the county court is required to equip, maintain, supply and furnish offices for the coroner and other county officers, to be paid for from the county treasury.⁴³ The City and County of St. Louis were at one time authorized by the legislature to erect and maintain within the city a morgue for the reception of dead and unknown persons.⁴⁴ In this statute it was further provided that the coroner of St. Louis County held a duty to view and, if necessary, hold a formal inquest on the body of persons received at

34. MO. CONST. 1875, Art. IX, § 13.

35. MO. REV. STAT. (1939), § 13450.

36. MO. REV. STAT. (1939), §§ 13446, 13452, 13473, 13493, 13537.

37. State *ex rel.* Patterson v. Marshall, 82 Mo. 484 (1884).

38. MO. REV. STAT. (1939), § 15684.

39. MO. REV. STAT. (1939), §§ 13249, 13252, 13253; Houts v. Prussing's Adm'r. 102 Mo. 13, 14 S. W. 766 (1890).

40. See note 31 *supra*.

41. REV. CODE ST. LOUIS (1926).

42. City Journal, Vol. XXV, No. 51, May 11, 1943.

43. MO. REV. STAT. (1939), § 13533.

44. MO. REV. STAT. (1939), § 15742.

the morgue provided for in the same section. There is at the present time a separate building in the City of St. Louis called the "Coroner's Court" which serves as the headquarters for the city coroner and the city morgue. It is under the complete and separate jurisdiction of the city coroner.⁴⁵

E. Acting Coroners; Deputies and Assistants

Where the coroner is unable to take the inquest any justice of the peace or any judge or justice of a court of record in the county may hold the inquest and discharge all of the duties required of the coroner.⁴⁶

Chapter 91 of the Missouri Revised Statutes, 1939, relating to inquests and coroners makes no provisions regarding deputies or assistants. There are, however, certain statutes which permit the appointment of deputies and assistants according to the population of the county as shown in Table I.

TABLE I⁴⁷

The Appointment of Deputies and the Regulation of Salaries for the
Office of Coroner in Missouri

<i>County Population</i>	<i>Salary of Coroner</i>	<i>Number of Deputies</i>	<i>Subject to Approval By</i>	<i>Salary of Deputies</i>
Less than 200,000 and containing a city with 75,000	\$2000	Determined by county court	County Court	\$1920
Not less than 200,000 and having less than 400,000	\$3000	As needed		Determined by county court
350,000 and less than 750,000	\$5000	Determined by county court	County Court	\$1500-2100
City of St. Louis	\$4000	3		\$2850

At present these laws apply only to Buchanan County, St. Louis County and the City of St. Louis. Appointments according to this plan are made by the coroner. In the City of St. Louis the coroner's office employs, in addition to two deputies, one clerk (also a deputy), three stenographers, one messenger, one superintendent of the morgue, one assistant superintendent of the morgue and a porter. In St. Louis County the coroner employs one or two deputies and one stenographer.

45. Mo. Rev. Stat. (1939), § 7769.

46. Mo. Rev. Stat. (1939), § 13243.

47. Mo. Rev. Stat. (1939), §§ 13466, 13489, 13534, 15682; Rev. Code St. Louis, (1926), §§ 185, 186, 187, 189, 190.

Deputies and assistants must aid in the prompt and proper discharge of the duties of the office.⁴⁸ In the City of St. Louis the deputies must take the same oath as the coroner; their powers and duties are the same as those possessed by the coroner.⁴⁹ No similar provisions apply to the rest of the state.

F. *Duties and Powers*

The duties and powers of the coroner are summarized in Tables II and III.

TABLE II⁵⁰
Duties of the Coroner in Missouri

<i>Judicial</i>	<i>Ministerial</i>
1. Bind witnesses in case of felony	1. Apply for jurisdiction of probate court in the case of persons of unsound mind
2. Fine constables for failure to execute and return warrants	2. Administer oaths (jurors and witnesses)
3. Fine jurors and witnesses for non-attendance at inquests	3. Bury unclaimed bodies
4. Hold inquests	4. Certify costs, expenses and fees
	5. Charge the jury to make certain declarations
<i>Police</i>	6. Deliver certain money and property
1. Act as conservator of peace	7. Discharge certain duties in connection with morgues in certain cities
2. Act as marshall in St. Louis County (certain conditions)*	8. Execute certain requirements of the county court
3. Act as sheriff under certain conditions	9. Inform justices or judges of the commission of a felony
4. Aid in quelling riots	10. Keep an account of all fees collected
5. Pursue escaped felons when publicly notified	11. Notify Anatomical Board of an unclaimed body
6. Serve and execute writs when acting as sheriff	12. Notify prosecuting attorney of the county and of certain cities of an inquest concerning a death by violence
<i>Miscellaneous</i>	13. Notify witnesses of the continuance of an inquest
1. Give bond on taking office	14. Pay fines collected to the proper fund
2. Take oath upon entering office	15. Sign certain death certificates
3. Report inquests and deaths each week to the health commissioner (City of St. Louis)	16. Sign verdict of jury
	17. Summon juries (by warrant)
	18. Transmit written evidence in case of felony
	19. View bodies and declare the cause of death (certain cases)

*The office of county marshall was in effect abolished in 1876 when the county of St. Louis and the City of St. Louis were separated.

TABLE III⁵¹
Powers of the Coroner in Missouri

<i>Judicial</i>	<i>Ministerial</i>	<i>Police</i>
1. Commit witnesses to jail for refusing to testify when lawfully required to do so	1. Appoint and discharge deputies and assistants in certain counties and cities	1. Arrest escaped felons
2. Commit witnesses to jail pending payment of fines imposed by him	2. Arrange for bringing dead bodies to shore	
3. Issue writs of attachment to compel attendance of witnesses	3. Control and manage the morgue in certain cities	
	4. Institute civil suits for recovery of fines upon jurors	
	5. Introduce expert testimony at inquests	
	6. Issue summons for witnesses and jurors	
	7. Order special examination of bodies at the request of jury	

Although the law requires an undertaker to notify the county registrar of deaths occurring without medical attention and further requires the registrar under such circumstances to notify the coroner if it appears, after inquiry by the health department, that death resulted from unlawful or suspicious means, there are no other specific statutory provisions regarding the duties of physicians, osteopaths, chiropractors, midwives, undertakers, public officials, hospitals, institutions, or others to report to the coroner a death which may require the holding of an inquest.⁵² The Missouri courts have held, however, that physicians, at least, have a duty to notify the coroner of such deaths⁵³ but the laws of Missouri do not specifically grant jurisdic-

48. Mo. REV. STAT. (1939), §§ 13466, 13489, 13534.

49. Mo. REV. STAT. (1939), § 15682; REV. CODE ST. LOUIS, (1926), § 185.

50. Mo. REV. STAT. (1939), §§ 450, 3882, 4613, 7769, 7770, 9767, 10000, 12984, 13144, 13145, 13227, 13228, 13231, 13233, 13234, 13235, 13236, 13239, 13240, 13241, 13242, 13245, 13248, 13251, 13253, 13255, 13262, 13263, 13266, 13444, 13475, 13493, 13537; REV. CODE ST. LOUIS, (1926), §§ 179, 181, 182.

51. Mo. REV. STAT. (1939), §§ 3872, 7769, 13231, 13234, 13238, 13246, 13260, 13262, 13265, 13466, 13471, 13489, 13534, 15682; REV. CODE ST. LOUIS, (1926), § 180.

52. See note 9 *supra*.

53. O'Donnell v. Wells, 323 Mo. 1170, 21 S. W. (2d) 762 (1929); Opinion, Office of Attorney-General, November 15, 1935.

tion to the coroner in the case of death of a patient in a hospital less than twenty-four hours after admission regardless of the cause of death. Jurisdiction in such instances depends entirely on the question of whether the identity of the patient was unknown, or whether death resulted from violence or casualty. Although the coroner may with authority order an inquest on the basis of any one of these three probabilities, it remains the duty of the physician to sign the death certificate.⁵⁴ The physician commits a misdemeanor if he refuses to certify such a death.⁵⁵ No criminal liability attaches where public officials fail to consult the coroner in releasing a body over which an inquest should have been held and was not because notification was not made.⁵⁶

TABLE IV⁵⁷

Important Features of Missouri Law Relating to Inquests
and Coroners

<i>Notification of Coroner</i>	<i>Holding of Inquests, when</i>	<i>Jury Summoned when</i>	<i>Autopsy conducted, when</i>	<i>Authority for Ordering Autopsy</i>
Physicians only "have a duty" to notify (no liability attaches for failure to notify)	Deaths from— Violence Casualty Death of— Unknown persons By request of— friends relatives	Deaths from— Violence Casualty	Deaths from— Violence Casualty Poisoning (homicidal)	Inquest— (coroner jury) Permission by relatives Anatomical Board (in the case of bodies to be buried at public expense)

There is no law specifically requiring the coroner of Missouri to be present at the scene prior to the removal of a dead body over which he may be warranted in holding an inquest. Undertakers are not required to secure removal permits where a dead body is removed for the purpose of preparing a dead body for burial.⁵⁸

The laws of Missouri require the coroner to hold inquests in only three

54. MO. REV. STAT. (1939), § 9766.

55. MO. REV. STAT. (1939), § 9782.

56. Opinion, Office of Attorney-General, October 21, 1942.

57. O'Donnell v. Wells, 323 Mo. 1170, 21 S. W. (2d) 762 (1929); Patrick v. Employers Mut. Liability Ins. Co., 233 Mo. App. 251, 118 S. W. (2d) 116 (1938); Crenshaw v. O'Connell, 235 Mo. App. 1085, 150 S. W. (2d) 489 (1941); MO. REV. STAT. (1939), §§ 10002, 13227, 13231, 13252, 13253, 13258.

58. MO. REV. STAT. (1939), § 9764.

instances:—(1) where the death is due to violence, (2) where the death is due to casualty (accident), or (3) where an unknown dead body is found.⁶⁰ The qualification that the dead person be “unknown” was not included until 1873 when the legislature enacted a statute directing that no fees or costs were to be allowed to the coroner by the county court unless there was “reasonable cause to believe that such body was that of a person who had come to his death by violence or casualty, or who, being *unknown*, was found dead”⁶¹ The coroner may, however, hold an inquest in deaths not due to violence or casualty where he is requested to do so by friends or relatives of the dead person, and a certificate of the cause of death is required for burial.⁶¹ Upon request by the registrar of deaths in the county, the coroner is required to investigate any death without medical attendance which the registrar believes to be due to unlawful or suspicious means.⁶²

Whether or not the law could thus classify the limits of the coroner’s jurisdiction was the subject of a court opinion delivered in 1863, where it was held that:

“There is not (nor could there be in the nature of things) any *classification of circumstances by law* circumscribing his action, or fixing precisely the limits of his authority. . . . The law has imposed no limits on the discretion of the coroner, by means of any preliminary inquiry or otherwise, for the purpose of restricting his action in making inquests; and when he acts, the presumption is he has acted in proper cases.”⁶³

This opinion had been delivered in connection with a controversy concerned primarily with whether or not the decision of the coroner to hold an inquest was subject to judicial review by the county court. It was the view at that time that it could not; subsequently the statutes provided the county court with the power to review the official acts of the coroner in connection with the allowance of costs and fees. It was therefore the opinion of the court in 1884 that:

“It must appear to the (county) court that there was reasonable cause to believe that the body was that of a person who had come to his death by violence or casualty, or who, being unknown, was found dead within such county. It is clearly the duty of the (county) court to reject the account if it does not so appear.”⁶⁴

59. MO. REV. STAT. (1939), §§ 13227, 13252.

60. MO. REV. STAT. (1939), § 13252 (italics mine).

61. MO. REV. STAT. (1939), § 13253.

62. See note 10 *supra*.

63. *Booisliniere v. Board of Country Comm’rs*, 32 Mo. 375 (1862).

64. See note 36 *supra*.

1945] *LAWS RELATING TO INQUESTS AND CORONERS* 47

In regard to the judicial power of the coroner in connection with the inquest the court in 1890 merely stated that it was "a proceeding judicial in character . . ."⁶⁵ and again in 1910 held that the coroner acts judicially in determining whether an inquest shall be held.⁶⁶ In 1938 the court took cognizance of some controversy in the matter, stating that "there is conflict in the authorities (judicial or ministerial) in which the coroner acts in performing his duties. Some of the authorities are to the effect that they are judicial in character, others quasi-judicial, and others ministerial. . . ." It was concluded however that "in this state the coroner acts judicially in determining whether an inquest shall be held, . . . aside from this there is nothing in the statute according the force and effect of a judicial proceeding to an inquest, itself."⁶⁷

Whether or not the coroner in Missouri has the authority or discretionary power to order or perform an autopsy was not subject to any question before the courts until 1938. It was probably assumed generally in the state that he possessed the judicial right to do so. Examination of the laws of Missouri, however, discloses only three statutes relating to post-mortem examinations and in none of these is there delegated to the coroner directly the power to act judicially in this respect.⁶⁸ Each of these statutes concerns the payment of fees either to physicians and surgeons, or to the coroner if he is also a physician or surgeon, or to chemical and medical experts. Two of the statutes are wholly fee statutes and merely indicate that fees will be allowed by the county court whenever the coroner or acting coroner calls upon a physician or surgeon to perform a post-mortem examination; or whenever the coroner, "being himself a physician or surgeon, shall conduct a *post-mortem* examination of the dead body of a person who came to his death by violence or casualty and it shall appear to the county court that such examination was necessary to ascertain the cause of such person's death. . . ."⁶⁹ The third statute relates entirely to examinations performed in conjunction with an inquest in a death by homicidal poisoning; in this law it is provided that the coroner "may, at the request of the jury, cause chemical analysis and microscopical examination of the body . . . or any

65. *Houts v. McCluney*, 102 Mo. 13, 14 S. W. 766 (1890).

66. See note 11 *supra*.

67. *Patrick v. Employers Mut. Liability Ins. Co.*, 233 Mo. App. 251, 118 S. W (2d) 116 (1938).

68. MO. REV. STAT. (1939), §§ 13250, 13257, 13258.

69. MO. REV. STAT. (1939), §§ 13250, 13257.

part of it, to be made. . . ."⁷⁰ The remainder of the statute concerns the payment of fees to the experts who are called upon in such cases.

It would thus appear that post-mortem examinations would be limited, according to the laws of the state, to deaths by violence or casualty or poisoning by homicide. So far as the authority in ordering or performing such examinations is concerned, the courts of Missouri have adopted the view that it rests with the inquest held by the coroner before a jury in the case of such deaths as may properly require official inquiry. Thus in 1938, it was the opinion of the court that:

" . . . the coroner has no authority to perform an autopsy . . . except in connection with an inquest to be held before a jury . . . of persons supposed to have come to their death by violence or casualty."⁷¹ This view was affirmed in subsequent litigation involving principally the same question (1941), but in addition the court held that:

" . . . while the coroner acts judicially, and has a discretion with respect to determining whether an inquest shall be held, neither the inquest itself, nor the calling and holding of an autopsy in connection with it, is a proceeding judicial in character so as to relieve the coroner from civil liability. . . ."⁷²

In this connection the statutes provide that in certain instances the coroner may view the body and declare the cause of death without summoning a jury so long as a "credible person shall have declared, under oath, to the coroner, that the person whose body is to be viewed came to his death by violence, or other criminal act of another. . . ."⁷³ In regard to whether an inquest so constituted carries with it the authority to order or perform a post-mortem examination the court found no occasion either in 1938 or in 1941 to come to a decision in this respect.⁷⁴ It was stated however that this section

"is primarily . . . a fee statute. That part of the statute beginning with the word "except" is very unusual not only in its construction, as to the language used, but in the way it is connected with the rest of the section . . . would seem to be that it shall not be considered that witnesses are unnecessarily summoned where the coroner elects . . . to declare . . . the cause of death. . . ."⁷⁵

70. MO. REV. STAT. (1939), § 13258.

71. See note 67 *supra*.

72. Crenshaw v. O'Connell, 235 Mo. App. 1085, 150 S. W. (2d) 489 (1941).

73. MO. REV. STAT. (1939), § 13255.

74. See notes 67 and 72 *supra*.

75. See note 67; In England the coroner is the sole judge of whether or not a post-mortem examination is necessary; certain penalties may be imposed

G. *Death Certificates*⁷⁶

Death without medical attendance must be reported by the undertaker to the registrar of deaths. The registrar is to notify the local health officer if that officer is a qualified physician and he is to investigate and certify the death. If the health officer is not a physician or there is no health officer the registrar is to make the death certificate from statements of relatives or other persons with adequate knowledge of the facts. If the death appears to be due to unlawful or suspicious means the case is to be referred to the coroner who is required to investigate and certify the death.

The law requires the physician who attended the decedent at the time of death to sign the death certificate.⁷⁷ The coroner signs the death certificate only in cases both without medical attendance and where the death is due to unlawful or suspicious means. The Attorney General's office holds that both conditions must be present, otherwise either the health department or a physician must sign the certificate.⁷⁸ The holding of the inquest alone does not give the coroner the right to sign the death certificate. In regard to the question of whether the terms "physician" and "medical attendance" apply to chiropractors and/or osteopaths the Attorney General of Missouri in a recent opinion⁷⁹ suggested that this was a matter to be answered by the courts. As yet no question of this kind has come before the courts.

TABLE V
Missouri Law Relating to the Signing of Death Certificates

PHYSICIAN only signs if,	CORONER only signs if,	HEALTH OFFICER, or REGISTRAR only signs if,
In attendance prior to or at time of death (Penalty attaches for refusal to sign if attending at time of death)	Death occurred WITHOUT ATTENDANCE and resulted from— violence casualty unlawful or suspicious means	Death occurred WITHOUT MEDICAL ATTENDANCE (Referred to coroner if death appears suspicious)

upon him for failure to summon expert medical advice in any given case. 7 HALSBURY, LAWS OF ENGLAND, (Hailsham, 2nd. 1939). In other states of this country where the coroner is a judicial officer as he is in England it is probable that he possesses comparable authority in the matter of autopsies. In several American states the authority to order autopsies rests with the prosecuting attorney of the county.

76. See note 10 *supra*.

77. See note 54 *supra*.

78. Opinion, Office of Attorney-General, July 27, 1934.

79. Opinion, Office of Attorney-General, March 31, 1944.

H. *Unclaimed Bodies; Valuables*

Where the coroner has custody of a body to be buried at public expense he must immediately notify the State Anatomical Board and deliver it to the Board within thirty-six hours unless retention by the coroner for a longer time is necessary.⁸⁰ An autopsy is not to be held without the consent of the Anatomical Board.⁸¹ The statutes continue to provide that where a body in the custody of the coroner is unclaimed the coroner is to procure a coffin, cause a grave to be dug, and arrange for burial,⁸² but in view of the above provisions such a procedure is subject to approval of the Anatomical Board. Within thirty days after the inquest the coroner is to deliver to the county treasurer any money or property found on the body of the person over whom the inquest was held, unless claimed prior to that time by legal representatives of the decedent.⁸³

I. CORONER SUBJECT TO PENALTIES

The coroner is subject to penalties imposed upon any public officer for criminal offenses while in office, and is subject also to provisions relating to removal from office of county, city, town and township officers for neglect, or violation of duty.⁸⁴ The statutes specifically charge the coroner with misdemeanor for fraudulently seeking the allowance of fees and provide that if convicted he shall be removed from office.⁸⁵ A coroner who is allowed fees or expenses for payment of other persons for services and fails to pay such fees or expenses may be charged with a felony and is subject to punishment for embezzlement.⁸⁶ If the coroner or other officers fail or refuse to pursue and arrest a felon when publicly notified they may be charged with a misdemeanor and subject either to a fine of up to five hundred dollars (\$500) or imprisonment up to one year or both.⁸⁷ Other statutes provide that the coroner and certain other officers of the county will be deemed guilty of a misdemeanor and required to pay fifty dollars (\$50) for wilful neglect or refusal to perform certain duties in connection with proceedings before justices in misdemeanors.⁸⁸

80. MO. REV. STAT. (1939), § 10000.

81. MO. REV. STAT. (1939), § 10002.

82. MO. REV. STAT. (1939), § 13245.

83. MO. REV. STAT. (1939), § 13266.

84. MO. REV. STAT. (1939), §§ 4323-4375 incl., 13254, c. 31, Art. 3, c. 83, Art. 3.

85. See note 70 *supra*.

86. MO. REV. STAT. (1939), § 13256.

87. MO. REV. STAT. (1939), § 3884.

88. MO. REV. STAT. (1939), §§ 4344, 12828.

If the coroner fails to give bond and to otherwise qualify within twenty days of his election to the office, or if he neglects to give new or additional bond satisfactory to the county court when requested to do so the office shall be deemed vacant.⁸⁹ Any principal of a county office who arranges with any deputy or assistant to this office for a rebate or bonus for himself or any other person is subject to imprisonment or fine or both.⁹⁰ The coroner is exempt from serving on juries and working on roads.⁹¹

II. INQUESTS

The inquest, whether conducted by the coroner alone or with the assistance of a jury, is not a judicial proceeding (although it was held at one time to have a judicial character), nor a court of record, but primarily a fact-finding, preliminary inquiry pertaining to the circumstances and manner of a given death within the official jurisdiction. This has been the view of the courts of Missouri since 1910.⁹²

The chief purpose of the inquisition held by the coroner is to determine whether or not a crime has been committed. If the available facts indicate that a felony has occurred, all evidence of it must be placed before the proper officials of the county, without judgment.⁹³ Necessary persons may be bound by the coroner for their appearance before these officials or before the proper courts.⁹⁴ Since the coroner does not act judicially in holding an inquest he is, therefore, not relieved of civil liability for his official acts.⁹⁵

The inquest is not a part of the criminal prosecution, although it is one step taken in the enforcement of the criminal laws of the state.⁹⁶ The sheriff is not required to attend the inquest,⁹⁷ but in certain localities, the prose-

89. See note 26 *supra*.

90. MO. REV. STAT. (1939), § 13471.

91. MO. REV. STAT. (1939), § 13227.

92. In *Houts v. McCluney*, 102 Mo. 13, 14 S. W. 766 (1890), the court held that the inquest "is a proceeding judicial in character"; a similar view was expressed in *Boisliniere v. Board of County Comm'rs*, 32 Mo. 375 (1862); in *State v. Mullins*, 101 Mo. 514 (1890) the court regarded the inquest as a "judicial proceeding"; in *Crenshaw v. O'Connell*, 235 Mo. App. 1085, 150 S. W. (2d) 489 (1941) the court stated: ". . . neither the inquest itself, nor the calling and holding of an autopsy in connection with it, is a proceeding judicial in character so as to relieve the coroner from civil liability. . . ."

93. MO. REV. STAT. (1939), § 13240.

94. MO. REV. STAT. (1939), § 13242.

95. See note 72 *supra*.

96. *Houts v. McCluney*, 102 Mo. 13, 14 S. W. 766 (1890); *State v. Bartley*, 337 Mo. 229, 84 S. W. (2d) 637 (1935).

97. *Hagener v. Pulitzer Pub. Co.*, 172 Mo. App. 436, 158 S. W. 54 (1912).

cuting attorney must be present whenever a charge of felony may result.⁹⁸ The prosecuting attorney, in his official capacity, may act independently of the inquest regardless of its findings; a grand jury may return an indictment even though no preliminary hearing has been held before a justice of the peace or a coroner.⁹⁹ Neither the sheriff nor the prosecuting attorney of a county can be held criminally liable for failure to consult the coroner before releasing a body over which an inquest should be held and was not.¹⁰⁰

The inquest is not guided by any rules of judicial procedure. Evidence is obtained from whatever witnesses the coroner can summon.¹⁰¹ The evidence, thus collected, is in large measure not directly admissible in subsequent litigation, and the verdict brought forward at the conclusion of the hearing is not regarded as proof of any particular event, but merely probative that a death did take place.¹⁰²

No provisions are made in regard to where inquests shall be held by the coroner. In certain counties the county court is required to furnish and equip offices for the coroner.¹⁰³ In the City of St. Louis inquests are held in a public building called the "Coroner's Court" which also includes the city morgue where dead bodies are brought when likely to be subject to official inquiry. It was the custom some years ago, at least in some communities, to hold inquests wherever a dead body was discovered; later, inquests were held at a place designated by the coroner, usually at his home or place of business. In St. Louis County at the present time all bodies which might be subject to official investigation are transported to the county hospital and the inquests held at the adjoining St. Louis County Health Center.

When the coroner elects to hold an inquest, he is directed by statute to issue a warrant to the constable of the township where the death occurred, ordering him to summon a jury to appear at a stated place and time to "inquire, upon a view of the body of the person there lying dead, how and

98. Mo. Rev. Stat. (1939), § 12984.

99. Mo. Rev. Stat. (1939), § 3893; *State v. Millsap*, 310 Mo. 500, 276 S. W. 625 (1925).

100. Opinion, Office of Attorney-General, October 21, 1942.

101. Mo. Rev. Stat. (1939), §§ 13238, 13260, 13262, 13263, 13264, 13265.

102. *O'Donnell v. Wells*, 323 Mo. 1170, 21 S. W. (2d) 762 (1929); *State v. Mullins*, 101 Mo. 514 (1890); *Whiteside v. Court of Honor*, 231 S. W. 1026 (1921); *Koehler v. Wells*, 323 Mo. 892, 20 S. W. (2d) 31 (1929); *State v. Allen*, 290 Mo. 258, 234 S. W. 837 (1921); *Childers v. Nat'l. Life and Acc. Ins. Co.*, 37 S. W. (2d) 490 (1931).

103. See note 43, *supra*.

by whom he came to his death.¹⁰⁴ If the coroner suspects that a charge of felony may result from the death, it is his duty to notify the prosecuting attorney of the city or county.¹⁰⁵ In the event that some "credible" person declares under oath that the person whose body is to be viewed "came to his death by violence, or other criminal act of another . . ." it is not necessary that the coroner summon a jury, a view and declaration of the cause of death being sufficient.¹⁰⁶

As soon as the jury appears, it is the duty of the coroner to administer the necessary oath and to issue a charge stating the duty of the jury in respect to the death under inquiry.¹⁰⁷ Following this, witnesses previously summoned by the coroner are directed to come forward and give evidence under oath.¹⁰⁸ Such evidence must be taken down in writing and subscribed by the witnesses.¹⁰⁹ The prosecuting attorney, if present, may assist in the interrogation of witnesses.¹¹⁰ When all such evidence has been heard, the jury is required to deliver their written verdict, signed by each juror, to the coroner who in turn signs it.¹¹¹ If the death is declared to be due to a felony, the coroner is obliged to so inform a court having jurisdiction in such matters, and to bind any necessary witnesses.¹¹² The written testimony in such cases is to be delivered to the court.¹¹³

A. Coroner's Jury

The statutes clearly declare that a jury must be summoned to any inquest whenever the death of the person is supposed to have resulted from violence or casualty,¹¹⁴ except in cases where the death is declared by a credible witness under oath to have resulted from violence or a criminal

104. MO. REV. STAT. (1939), § 13231.

105. See note 98 *supra*.

106. See note 73 *supra*. The courts of Missouri view this as an unusual provision, both in its construction, and in the manner in which it is appended to the rest of the section which primarily deals with fees allowable by the county court in connection with inquests. "Where the coroner elects . . . to proceed without a jury, the county court will not regard the witness as having been unnecessarily summoned." *Patrick v. Employers Mut. Liability Ins. Co.*, 233 Mo. App. 251, 118 S. W. (2d) 116 (1938).

107. MO. REV. STAT. (1939), §§ 13235, 13236.

108. MO. REV. STAT. (1939), §§ 13238, 13239.

109. See note 93 *supra*.

110. See note 98 *supra*.

111. MO. REV. STAT. (1939), § 13241.

112. See notes 93 and 111 *supra*.

113. See note 93 *supra*.

114. See note 104 *supra*.

act, as previously noted.¹¹⁵ While the law would appear to indicate that the coroner is required to hold an inquest in connection with the finding of the dead body of an unknown person, there is no specific mention of the jury in this regard.¹¹⁶ The coroner's jury is not mentioned specifically in the constitution nor in the statutes relating to grand and petit juries.¹¹⁷

The coroner's jury is to comprise "good and lawful men" who are householders of the township where the dead body is found.¹¹⁸ Chapter 5 of the Missouri Revised Statutes of 1939 requires that "every juror, grand and petit, shall be a male citizen of the state, resident of the county, sober and intelligent, of good reputation, over 21 years of age, and otherwise qualified," but this section appears to refer to jurors selected in connection with terms of the enumerated tribunals of the state. The inquest is not among the enumerated tribunals and is not a court of record.¹¹⁹ No provisions are made for any challenge of a juror serving at an inquest. The Constitution of Missouri provides that in courts not of record the jury may consist of less than twelve men as prescribed by law.¹²⁰ By statute the coroner's jury is to be made up of six men.¹²¹

The jury has four duties (1) to view the body, (2) to hear the evidence, (3) to inquire how and by whom death occurred, (4) to return a verdict. When the jury has assembled before the coroner he is required by law to administer an oath or affirmation to the jurors as follows:

"You solemnly swear (or affirm) that you will diligently inquire and true presentment make, how and by whom the person who here lies dead came to his death, and you shall deliver to me, coroner of this county, a true inquest thereof, according to such evidence as shall be laid before you and according to your knowledge."¹²²

It is intended apparently that the viewing of the body by the jury be made at the time the oath is administered. After administering the oath to the jurors, the coroner is directed to issue a charge to them to declare whether the death is due to a felony, accident, or suicide, and to describe all particulars pertaining to the death, including the names of principals, acces-

115. See note 73 *supra*.

116. See notes 60, 91 and 104 *supra*.

117. MO. REV. STAT. (1939), c. 5, Art. 1.

118. See note 104 *supra*.

119. See note 12 *supra*.

120. MO. CONST. (1875), Art. II, § 28.

121. See note 104 *supra*.

122. MO. REV. STAT. (1939), § 13235.

sories, witnesses, the finder of the body, the place of death, the place of injury, and the means employed to cause death.¹²³ The jury is to remain together and deliver the verdict in writing with the signature of each juror.¹²⁴

B. *Participation of Prosecuting Attorney*

It is the duty of the coroner to notify the prosecuting attorney of his county or city whenever an inquest is to be held in connection with the death of a person by violence or casualty from which a charge of felony may result. In cities having a population of 500,000 or more it is the duty of the prosecuting attorney or the circuit attorney to attend such inquests. In such cases the coroner is to permit the officer to assist in the interrogation and to bring witnesses before the inquest.¹²⁵

C. *Witnesses and Evidence*

It is within the power of the coroner to issue summons for witnesses to appear before him and "declare their knowledge concerning the matter in question" but it is further stipulated that it is the duty of the coroner "to summon . . . only such number of witnesses as . . . may reasonably appear sufficient to prove the essential facts . . ."¹²⁶ If a witness is unnecessarily summoned, the fees for that witness will not be allowed by the county court.¹²⁷ In the event that a witness fails to appear without reasonable excuse after having been summoned, the coroner has the power to "issue an attachment to compel attendance. . ."¹²⁸ In addition, the witness may be fined and committed to jail.¹²⁹ Whenever an inquest is continued it is sufficient that the coroner verbally notify witnesses previously summoned to appear again at a later date; no further notification is required.¹³⁰ Attachment may be issued in such cases for non-attendance on the date set for the continuance. Witnesses may be required by the coroner to offer bond insuring their appearance in a court of criminal jurisdiction in the case of a death by felony.¹³¹ After execution of a writ of attachment against a witness, release may be obtained by a bond of one hundred dollars (\$100) signed by

123. Mo. REV. STAT. (1939), § 13236.

124. Mo. REV. STAT. (1939), §§ 13241, 13247.

125. See note 98 *supra*.

126. Mo. REV. STAT. (1939), §§ 13238, 13255.

127. See note 73 *supra*.

128. Mo. REV. STAT. (1939), §§ 13260, 13262.

129. See note 128 *supra*.

130. Mo. REV. STAT. (1939), § 13263.

131. See note 93 *supra*.

one or more sureties.¹³² Any officer, appointee or employee of the state or of a township or municipality can be compelled by subpoena to attend the inquest.¹³³

Witnesses giving testimony must swear to or affirm the following oath:

"You do swear (or affirm) that the evidence you shall give to the inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth and nothing but the truth."¹³⁴

The manner in which this oath is worded suggests that the corpse be exhibited to the witnesses at the time they are sworn.

Since the inquest is not a court of record and is not included in the enumerated tribunals of the state, the evidence collected as a part of the inquest has a different legal status than that obtained in the duly constituted courts.¹³⁵ There are two requirements which must be fulfilled in this respect before such evidence can be considered in relation to subsequent litigation, either civil or criminal. In the first place, all evidence must be taken down in writing and subscribed by the witnesses;¹³⁶ secondly, a witness who may be a defendant in a subsequent trial charge must be advised of his constitutional rights.¹³⁷ It must be clearly shown that he was not compelled to testify. It was the view of the courts of Missouri that if such requirements were met, the testimony given by a defendant before the inquest would be regarded as competent evidence against him at a subsequent trial;¹³⁸ and that the wife of a defendant under these circumstances would be liable to cross-examination at a subsequent trial upon any matter referred to by her before the inquest.¹³⁹ However, the mere statements of a witness made before an inquest in the presence of the defendant are not viewed as subsequently admissible in evidence against him.¹⁴⁰ The general attitude toward depositions given by witnesses at the coroner's inquest was expressed in an opinion delivered by the court in 1910:

"As to depositions given by witnesses at the coroner's inquest, it ought to be sufficient to say that every principle of natural justice

132. MO. REV. STAT. (1939), § 13264.

133. MO. REV. STAT. (1939), § 4232.

134. MO. REV. STAT. (1939), § 13239.

135. See note 12 *supra*.

136. See note 93 *supra*.

137. MO. REV. STAT. (1939), §§ 3871, 4081, 4082; *State v. McDaniel*, 336 Mo. 656, 80 S. W. (2d) 185 (1935).

138. *State v. Mullins*, 101 Mo. 514 (1890).

139. *State v. Allen*, 290 Mo. 258, 234 S. W. 837 (1921).

140. See note 138 *supra*.

points these should be excluded. *Ex parte* statements thus given without an opportunity being accorded an interested party to examine the witnesses fall within the rule against hearsay evidence. . . . Indeed, it has been decided many times that depositions . . . before the coroner are not competent to be received in evidence. . . ."¹⁴¹

While the court could thus appear to exclude from trial evidence the testimony given before the inquest, it did not undertake to remove it entirely from consideration, stating that:

"Such depositions may be used for the purpose of contradicting a witness before the coroner who gives testimony in subsequent litigation touching the subject matter."

And again in a later opinion:

"Testimony before a coroner may be used to impeach testimony at a subsequent trial."¹⁴²

In regard to the verdict of the jury, the courts hold that it is competent in evidence only as a part of the proof that death occurred but cannot be received as proof of the cause of death.¹⁴³ The admissibility in evidence before a court of record of the certificate of death signed by the coroner will depend entirely on the question of whether it is signed in accordance with the law.¹⁴⁴ As noted previously, the mere holding of an inquest does not confer upon the coroner the duty to sign the death certificate; if the coroner signs a death certificate where it is not his duty to do so, the certificate is inadmissible in evidence before a court of record.¹⁴⁵

The coroner may introduce expert testimony at the inquest whenever it relates to a death from homicidal poisoning and the jury has requested chemical analysis and microscopical examination to be made of the body.¹⁴⁶

D. *Verdict*

The verdict is to be delivered in writing by the jury and signed by each juror.¹⁴⁷ It is then signed by the coroner.¹⁴⁸ There are no provisions relating to a failure of the jury to reach a verdict, nor is it stated whether

141. See note 11 *supra*.

142. See note 139 *supra*.

143. See note 11 *supra*; Childers v. Nat'l Life and Acc. Ins. Co., 37 S. W. (2d) 490 (1931).

144. See notes 67, 72, 78 *supra*; O'Donnell v. Wells, 323 Mo. 1170, 21 S. W. (2d) 762 (1929); Whiteside v. Court of Honor, 231 S. W. 1026 (1921).

145. O'Donnell v. Wells, 323 Mo. 1170, 21 S. W. (2d) 762 (1929).

146. See note 70 *supra*.

147. See note 111 *supra*.

148. See note 111 *supra*.

the verdict must be unanimous or by a majority. However, in discharging its duties the jury is merely required to make a declaration of the facts in the case and to come to a conclusion as to the mode or manner of death without pronouncing judgment.¹⁴⁹ While the jury may name the principals and accessories involved in a felony, it is not within the scope of their duty to declare the guilt or innocence of such persons.¹⁵⁰ There is no statutory provision relating to the opinion of the coroner in connection with the verdict, except in the special circumstances, previously referred to, where he views the body and declares the cause of death without summoning a jury.¹⁵¹

E. Penalties

In connection with the maintenance of inquests, the statutes authorize assessment of penalties against (a) *constables*—The constable may be fined eight dollars (\$8.00) by the coroner for failure to execute and return writs:¹⁵² (b) *jurors*—A juror who fails to appear or to make reasonable excuse for non-attendance within five days after the date of the inquest when summoned by the coroner may be required to pay five dollars (\$5.00).¹⁵³ A civil action in the name of the state may be instituted by the coroner before any justice of the peace for recovery of this amount: (c) *witnesses*—Witnesses who refuse to give evidence which may lawfully be required of them under oath by the coroner may be committed to the city or county jail without bail until such evidence is given or be discharged by due course of law.¹⁵⁴ Witnesses without good and reasonable excuse for non-attendance at an inquest when summoned may be fined not more than ten dollars (\$10.00) by the coroner and may be committed to jail until the fine and costs are paid.¹⁵⁵ Witnesses attached by writ may be required to put up a bond of one hundred dollars (\$100) with one or more sureties before being discharged.¹⁵⁶

F. Fees

*Constable*¹⁵⁷—In townships having more than 75,000 inhabitants the constable receives the same fees as are allowed marshals and sheriffs in

149. See note 123 *supra*.

150. See note 11 *supra*.

151. See note 73 *supra*.

152. MO. REV. STAT. (1939), § 13233.

153. MO. REV. STAT. (1939), § 13234.

154. MO. REV. STAT. (1939), § 13265.

155. MO. REV. STAT. (1939), § 13262.

156. See note 132 *supra*.

157. MO. REV. STAT. (1939), § 13399.

the county. In any county having not less than 200,000 and less than 400,000 inhabitants the constables are directed to collect the fees authorized by law and turn them into the county treasury. In lieu of such fees the constable of such a county will receive not more than two thousand seven hundred dollars (\$2,700) each year. *Jurors*¹⁵⁸.—Each juror attending an inquest is allowed one dollar (\$1.00) per day. No allowances are made for the cost of travel to and from the place of inquest. Jurors appearing at the same place and on the same day in more than one case are allowed fees for only one case. *Witnesses*¹⁵⁹.—Witnesses appearing before a coroner or inquest are allowed one dollar and fifty cents (\$1.50) for each day. No allowance is made for the cost of travel. No state, county, township or municipal officeholder, appointee or employee may receive witness fees for testimony at an inquest except where the residence of such officer is five miles or more from the place of the inquest.¹⁶⁰ *Physicians and Surgeons*¹⁶¹.—A physician or surgeon called by the coroner or acting coroner to conduct a postmortem examination is allowed not more than ten dollars (\$10.00) by the county court for his services. Where chemical and microscopical examination is made by experts the county court will allow "just and reasonable" fees for the analysis, examination and testimony. By ordinance physicians or surgeons performing autopsies for the coroner of the city of St. Louis may receive up to twenty-five dollars (\$25.00) for their services.

III. CONCLUSIONS

From the foregoing survey it is clear that the present law in Missouri does not permit the coroner to be a fully effective agency in county government, either in the enforcement of law, the administration of justice, or the protection of public health. Today, the coroner conducts his proceedings with the crude machinery of a court but he has no important judicial power beyond the issuing of a subpoena or the ordering of an inquest. As a result, his findings become mere dicta and the verdict of his jury only a legal proof of death. What jurisdiction he retains is limited to obvious deaths from violence or casualty. At least fifty percent of all deaths likely to be subject to official inquiry are not investigated by the

158. MO. REV. STAT. (1939), § 13419.

159. MO. REV. STAT. (1939), § 13420.

160. See note 134 *supra*.

161. MO. REV. STAT. (1939), §§ 13250, 13258; REV. CODE ST. LOUIS, (1926), § 183.

coroner, but are under the original jurisdiction of the health department. Providing the health officials, upon interrogation, find no evidence of "unlawful or suspicious means," they need only to record a "statement of relatives or other persons" in any death without medical attendance reported by undertakers to them. Neither the coroner nor the health department possesses the power to ascertain the exact cause of death in the interests of public health and safety. Physicians in attendance at the time of death may certify the probable cause of the fatal issue to the health department, even in the case of homicide, suicide, accident or poisoning, without awaiting investigation by the proper authorities, and in spite of the fact that the certificate of death may prove later to be in error. Furthermore, the legislature has never made any satisfactory explanation of what is intended by the term "medical attendance."

The survey discloses that no person or any institution, public or private is required to consult or notify the coroner of a death within his jurisdiction. Moreover, it is possible by law for an undertaker to remove and prepare a body for burial without the permission of the coroner, although an investigation before the body is moved or embalmed may be essential to the discovery and proof of a crime.

The general pattern of medico-legal practice today makes it obvious that the chief duties of the coroner are now of a medical nature, requiring either that the coroner himself have the necessary specialized knowledge of such matters, or that he employ competent medical assistance to discharge his obligations in this respect. The mere viewing of the body by both the coroner and the jury can no longer serve as a substitute for a scientific examination, particularly in view of the fact that violence may result in death without producing any external wound and the possibility that a body disfigured by violence may be restored to a natural appearance by the undertaker before being exhibited to the jury. The performance of autopsies and chemical analysis of postmortem tissues is often essential in determining the cause of death. Examination of the laws of Missouri reveals that the authority of the coroner to conduct or order an autopsy is not granted by statute but depends almost entirely upon a judicial opinion delivered in 1938. According to this opinion, such a procedure must be limited to deaths from violence or casualty and associated with the holding of an inquest. Should the coroner order an autopsy in the case of a death, the exact cause of which is uncertain and in which there is reason to suspect violence or casualty, the fact that the medical disclosures

terminate the need for further investigation will not obviate the legal obligation to hold an unnecessary inquest. In the case of a fatal poisoning, inspection of the laws of Missouri discloses that chemical analysis must be confined to deaths from homicide without any specific mention of the authority necessary to conduct an autopsy for the purpose of obtaining the tissues required by the analyst. Furthermore, the survey shows that both the coroner and the physician may be liable for civil damages whenever an autopsy is performed in order to determine the cause of death. There appears to be no provision of any kind in the accumulated laws of Missouri for the examination of the body of a person whose death, although unattended by manifest suspicion, is so obscure that no definite cause of death can be assigned without a scientific examination of the remains.

In regard to the purely investigative non-medical duties of the coroner, the survey indicates that these have been taken over for the most part by the police and prosecutor. Unless the coroner possesses an adequate knowledge of crime detection and law, he must depend upon the police to collect proper evidence and upon the prosecutor to obtain competent testimony. In the event that the coroner does not take the precaution of securing both, all depositions taken by him may be excluded subsequently before the courts. It is significant that the prosecutor must be notified by the coroner whenever a death results from violent or accidental means, a provision apparently intended to insure that the state be represented at the inquest by qualified legal counsel. Despite this fact, the prosecutor may, with the assistance of the police, independently acquire and appraise evidence relating to a death by criminal means without acknowledging any action taken by the coroner. This again emphasizes the fact that although the jury is regarded by law as an essential part of the inquest its conclusions are not privileged.

A glance at Table II and Table III discloses many miscellaneous duties and powers of the coroner that are now obsolete. He no longer functions as a peace officer, or assists in the quelling of riots, or in the pursuit and arrest of felons. It is not likely that there exists any need for the coroner to apply to the probate court for its jurisdiction in the case of insane persons. The disposal of unclaimed bodies is no longer the responsibility of the coroner but is now subject to the action of the State Anatomical Board.

Most of the coroners in Missouri continue to be paid on a fee basis. Many of the statutes which pertain to the costs, fees and expenses of the

coroner remain as a part of the law in spite of the fact that they tend to conflict with a fair and practical public policy. The survey shows that families may be held responsible for the costs of an inquest held in connection with the death of a minor, or of a person with an estate. It is further directed by law that a person notifying the coroner of a death "without reasonable cause to suppose that such dead body was that of a person unknown or who had come to his death by violence or casualty" shall be liable for all costs of an inquest or view. It would appear unjust to charge a private citizen with the duty of determining beforehand whether or not the death is a proper case for the coroner. That is the responsibility of the coroner and his subsequent error in holding an inquest could not reasonably be charged against the individual notifying him. This has been corrected to some extent, the survey shows, by placing the entire matter of fees at the discretion of the county court but it does not entirely eliminate the possibility that these statutes may be invoked at a future date.

In a few states (Maryland, New York, Massachusetts, New Jersey) the recognition of such deficiencies in the coroner law and the realization of the increasing importance of the police, prosecutor and the physician especially trained in medico-legal work have led to the adoption of alternative plans. In general the following changes have been made: (1) the non-medical duties of the coroner have been transferred to a district court, (2) the medical duties of the coroner have been placed in the hands of a physician trained in pathology, (3) the title of the office has been changed to "medical examiner." Under such a system the health department no longer participates in any phase of the inquiry; the medical examiner reports his findings in proper cases directly to the prosecutor who, in turn, presents all evidence to the district court which conducts the hearing.

In some states the medical examiner plan has gone into operation in each county; in a few it has been subject to local option and adopted only in counties with a large population. In one state (Maryland) the new system has taken the form of a state organization with a deputy in each county.

In some instances the coroner and inquest have been retained but with provision for the appointment by the coroner of a full-time pathologist to perform autopsies and chemical examinations at the request of either the coroner or the prosecutor. In certain counties of New Jersey

the coroner continues to hold inquests, but only upon the recommendation of the county physician who has original jurisdiction in all violent, obscure or suspicious deaths. Many states now require that the coroner be a physician.

Several references have already been made to the coroner system in England which served as a model for this office throughout America. The provisions in effect there emphasize the judiciary character of the office of coroner and recognize the effectiveness of competent assistance. While medico-legal work has improved as a result, the importance of the inquest as a judicial body has declined. As recently as 1935 further modifications of the coroner system in England were being considered.

The trend in modification of the coroner system or in the adoption of a medical examiner plan has included certain provisions as the following: (1) appointment of medically or legally qualified persons either by local government, state, civil service, or a non-political board or commission serving without pay, (2) provision for a term of office exceeding that of any elected official, or for life, or for an indefinite period of time with termination in office possible only by reason of age, incompetence, or corruption, (3) granting of broad discretionary powers and clearly defined authority in cases where death results from violence, casualty, suicide, or neglect; or where death occurs under suspicious or unusual circumstances; or where death occurs suddenly without apparent cause, or without attendance by a physician or in a prison, or within twenty-four hours after admission to any institution, (4) authority to employ competent medical and technical assistance if the principal of the office is not himself qualified, (5) provision for notification of the principal of the office in any proper case and penalty upon those failing to do so, (6) granting of exclusive authority to the principal of the office regarding removal of a person dead from any of the foregoing causes or dying under the foregoing circumstances.

The duty of the state effectively to administer civil and criminal justice and to protect its citizens against violent and unnatural death as well as against potentially fatal hazards to public health and safety carries with it the responsibility to provide measures that will permit vital agencies to function efficiently in serving this purpose. In Missouri so far as the coroner is concerned these measures are lacking. The example provided by other states recognizing this important deficiency in the function of government should be a useful guide to future legislation.