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## Coroner v. The Medical Examiner in Missouri, The

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# Comments

## THE CORONER v. THE MEDICAL EXAMINER IN MISSOURI

### I. INTRODUCTION

Approximately twenty percent<sup>1</sup> of all deaths in the United States involve circumstances which necessitate official investigation. There is sharp contrast, however, in the type of system used by the various states (and in some cases, by smaller jurisdictional units) to perform such investigations. In thirty-seven states<sup>2</sup> a modern medical examiner system is in effect, while in Missouri, and in twelve other states,<sup>3</sup> laymen are charged with the responsibility of investigating certain deaths by virtue of the ancient<sup>4</sup> coroner's office. The main function of both systems is to provide for the investigation of all deaths which have occurred suddenly or unexpectedly from obscure causes or by violence, and to detect such medical facts as are required for the administration of justice and the preservation of public safety. To accomplish better this function, many states have enacted medical examiner legislation to replace their old coroner systems.

The National Municipal League made a study of coroner and medical examiner systems which, when reported in 1951, resulted in the publication of *A Model State Medico-Legal Investigative System*.<sup>5</sup> This proposal was endorsed by legal

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1. The annual report of the Bureau of Census estimates that one death in ten results from violent or unnatural causes, and experience in the medical examiner's offices in Maryland, Massachusetts, and New York City indicates an *additional* one death in ten results from causes so obscure as to necessitate a public inquiry. Committee on Medico-legal Problems, *Medical Science in Crime Detection*, 200 J.A.M.A. 2 (Apr. 10, 1967).

2. In seventeen of the states having a medical examiner system, it is administered on a local option basis rather than statewide. This allows each city or county to elect independently to have or not have a medical examiner.

3. Alabama, Hawaii, Idaho, Indiana, Kentucky, Mississippi, Montana, Nebraska, South Carolina, South Dakota, Washington, and Wyoming.

4. Next to the sheriff, the coroner is the oldest judicial officer in the Anglo-American legal system. Most authorities think the office of coroner originated in September, 1194, by chapter twenty of the Articles of Eyre, but others consider this first written mention of the office as but an indication of a more ancient office. Comment, 37 TEMP. L. Q. 204, 205 (1964).

5. The study was made under the leadership of Richard S. Childs and the final report drafted by Dr. Richard Ford, Director of the Department of Legal Medicine at Harvard, and former Massachusetts State Medical Examiner. This model act was based primarily on systems already in operation in Massachusetts, Maryland, and Virginia.

and medical associations nationwide.<sup>6</sup> In 1954, the National Conference of Commissioners on Uniform State Laws proposed the *Model Post-Mortem Examinations Act*<sup>7</sup> as a guide for desirable medical examiner legislation. The goal of such legislation is to provide a means to assure greater competence in determining causes of death where criminal liability may be involved. However, the Maryland State Post-Mortem Examinations Law<sup>8</sup> of 1939, the first medical examiner system established in the United States, to this day remains the best integrated example of an effective and workable system for investigating deaths. Both of the model acts and also many states have patterned their medical examiner systems after the Maryland system.

Attempts have been made in Missouri for the passage of medical examiner legislation. The 1951 Report of the Medico-Legal Committee to the Missouri Bar stated that there was a "serious need" for some method of supplanting the present coroner system, and that the Committee was addressing itself to the development of a medical examiner investigative system to fit the needs of Missouri.<sup>9</sup> Since 1951, various bills calling for reform of the coroner system have been proposed to the Missouri legislature. None have been passed. But the first complete medical examiner system was not proposed until 1967.<sup>10</sup> It was passed by the Missouri House of Representatives, but was killed in a Missouri Senate committee. Currently the 75th General Assembly has an opportunity to reconsider the question, as bills for the creation of a medical examiner system were introduced into both chambers of the Legislature on January 29, 1969.<sup>11</sup>

## II. THE MISSOURI CORONER

### A. History

It has been one hundred and sixty-two years since the first territorial laws of Missouri provided for inquests and coroners. Prior to 1807, little is known regarding official inquiry into sudden, violent, obscure or suspicious deaths in Missouri.<sup>12</sup> In that year, however, a law was enacted which provided that a

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6. American Medical Association, American Bar Association (criminal law section), American Judicature Society, National Civil Service League, College of American Pathologists, Society of Medical Jurisprudence, and the American Heart Association.

7. The Model Act is set out in Comment, 30 U.K.C. L. REV. 72, 79 (1962).

8. MD. ANN. CODE art. 22 (1957).

9. Report of Medico-Legal Committee, 7 J. MO. BAR 133 (1951).

10. H.B. No. 440 (74th General Assembly), read the first time February 15, 1967, and introduced by Representative Ronald Reed, Jr. of St. Joseph, Missouri.

11. H.B. No. 341 (75th General Assembly). The full text of this bill is printed in the Appendix to this article. It was introduced by Representatives Reed, Ross, Holt, Schramm, Branom, Marriott, Heflin, Phelps, Antoine, Scaglia, Hill, Valier, Jones, and Mulvaney. S.B. No. 146 (75th General Assembly), introduced by Senator Cason of Clinton, Missouri.

12. The United States took formal possession of the Louisiana Territory, which included the land now known as the state of Missouri, in 1804, and any investigation required was most likely conducted by the police as in France and

coroner be commissioned by the governor of the Louisiana Territory for each district; nine separate provisions were established for conduct of the office.<sup>13</sup> In 1812, the government of the territory was reorganized and in 1815 the common law of England was adopted. On both occasions the office of coroner and the nine provisions regulating it remained the same as when established in 1807. Similarly, the coroner's office remained unchanged when Missouri officially became a state in 1821. The coroner thus was an appointive office until 1865, when the Missouri Constitution of that year provided for election to a two year term of office and thereby made the coroner a constitutional officer.<sup>14</sup> From 1825 through 1885, many supplementary provisions were added to the coroner statutes.<sup>15</sup> The only additions to the coroner statutes after 1885 until 1939 were the adoptions of schedules of fixed salaries in certain counties.<sup>16</sup> The original nine provisions enacted in 1807 were included in the Missouri Revised Statutes of 1939,<sup>17</sup> and with but one provision deleted, in the Missouri Revised Statutes of 1959.<sup>18</sup> Since 1939, many minor changes and additional provisions have been made to the coroner statutes. During the Constitutional Convention of 1943-1944, the abolition of the coroner's office was considered and other plans of death investigation were debated. As a consequence, the coroner ceased to be a constitutional officer in the new constitution of 1945, and provisions for the continued election of the coroner, for a term which was increased to four years, were adopted in statutory form.<sup>19</sup> Missouri's present coroner system exists by authority of chapter 58 of the Revised Statutes of Missouri of 1959.

### B. Present Operation

The Missouri coroner is a county office, which means that the coroner's jurisdiction is limited to the boundaries of the county in which he is elected.<sup>20</sup> The election is almost always by the operation of partisan politics rather than a race based on the merits of the candidates. To qualify for coroner, a person need only be over twenty-one years of age, have been a Missouri resident for one year, and a county resident for six months.<sup>21</sup> No special qualifications (such as medical training, a medical license, or experience in criminal investigation) are necessary.

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Spain. In 1805, the Territorial Acts provided that the Governor of the Territory appoint necessary civil officers within each district, but it is not known if a coroner was so appointed.

13. Under an Act dated July 3, 1807, 1 TERR. LAWS, p. 101.

14. MO. CONST. art. V, § 22 (1865).

15. Relating to: fees—1843, 1847, 1873, 1885; costs—1845, 1847, 1873; salaries—1873; witnesses, fines, writs and valuables—1885; penalties—1873, 1885; unclaimed bodies, floating bodies—1847; inquests for poisoning—1874; oath and bond—1825, 1845; duty of St. Louis County coroner to act as marshal—1855.

16. Mo. Laws 1893, at 168, § 1; 1911, at 389, § 1; 1939, at 679, § 1.

17. §§ 13227, 13231-13244, RSMo 1939.

18. §§ 58.180, 58.260-58.370, 58.400 RSMo 1959.

19. Mo. Laws 1945, at 1405, § 2 (now § 58.020, RSMo 1959).

20. State *ex rel.* Horton v. Clark, 320 Mo. 1190, 9 S.W.2d 635 (Mo. En Banc 1928).

21. § 58.030, RSMo 1959.

The Missouri coroner is to take inquests of deaths by violence or casualty occurring within his county, or where the body is discovered in his county, but death actually occurred in another county.<sup>22</sup> This inquest is to determine the cause of death and to discover any evidence at the scene, or on or in the body, relating to the death. A coroner's jury attempts to accomplish this by hearing testimony and physically viewing the body and the surroundings where it was found. This limited investigation is available only under circumstances where the coroner learns of the death through some voluntary source; except in St. Louis, St. Louis County, and Jackson County, he has no authority to require any person to notify him of the presence of a dead body.<sup>23</sup> Consequently, the coroner cannot prevent an undertaker from embalming or otherwise altering (*e.g.*, cremating) a dead body before he has been notified and has had an opportunity to investigate.

If a witness exists who swears under oath that death was caused by some violent act of which he has personal knowledge, then the coroner may dispense with the jury and formal inquest, and declare the cause of death himself.<sup>24</sup> In order to determine and document the cause of death, it is often necessary for an autopsy to be performed and chemical analyses to be made of post-mortem tissues.<sup>25</sup> Disregarding for the moment the more important question of the coroner's qualifications to perform an autopsy, discussed *infra*, the problem is that, in Missouri, the coroner must have the specific authorization of the deceased's next-of-kin to perform *any* autopsy, unless done in connection with a formal inquest before a coroner's jury.<sup>26</sup> Thus, when the coroner reasonably suspects, via the sworn witness, that the death resulted from violence, he must still summon a jury of laymen and conduct a formal inquest to determine the fact of said violence. Otherwise, he cannot legally perform an autopsy.<sup>27</sup> It must be admitted, however,

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22. § 58.180, RSMo 1959. *Patrick v. Employers Mut. Liab. Ins. Co.*, 233 Mo. App. 251, 118 S.W.2d 116 (K.C. Ct. App. 1938), held that the coroner acts judicially in respect to determining to hold an inquest.

23. *State v. Stringer*, 357 Mo. 978, 211 S.W.2d 925 (Mo. 1948). Opinion of the Attorney General of Missouri, No. 389, 1966. Exception being made in § 58.451, RSMo 1959, for persons in cities with 700,000 inhabitants or any first class county, where a duty to inform the coroner does exist. And Missouri courts have held that a duty exists for attending physicians to notify the coroner of deaths which may require an inquest. *O'Donnell v. Wells*, 323 Mo. 1170, 21 S.W.2d 762 (1929). However, it is a duty to which no liability attaches for failure to notify. Breyfogle, *The Laws of Missouri Relating to Inquests and Coroners*, 10 Mo. L. Rev. 34 (1945).

24. § 58.610, RSMo 1959. *Crenshaw v. O'Connell*, 235 Mo. App. 1085, 150 S.W.2d 489 (St. L. Ct. App. 1941).

25. Autopsy is a scientific methodical post mortem examination of organs and tissues for the purpose of determining which are diseased or injured and which are not.

26. *Patrick v. Employers Mut. Liab. Ins. Co.*, 233 Mo. App. 251, 118 S.W.2d 116 (K.C. Ct. App. 1938).

27. *Patrick v. Employers Mut. Liab. Ins. Co.*, *supra* note 26. In *Crenshaw v. O'Connell*, 235 Mo. App. 1085, 150 S.W.2d 489 (St. L. Ct. App. 1941), the court refused to decide whether the authority to perform an autopsy existed in this instance as there was no witness willing to swear that the cause of death was violent; thus the coroner was bound to hold an inquest. His failure to do so gave rise to damages for illegally performing an autopsy.

that not every investigation requires an autopsy. In some cases, examination of the body coupled with interrogation of witnesses provides sufficient evidence for a physician to conclude that death resulted from natural causes.

However, in Missouri, the coroner need not be, nor is he typically, a physician.<sup>28</sup> In many instances, such as poisoning, asphyxiation, or injury to the skull or brain, spine, stomach, and other internal organs, a physical view by a coroner's jury, or even an examination by the non-physician coroner, will not detect the actual cause of death. Even when the coroner employs a physician the true cause of death may not be discovered since very few doctors are trained to make a proper medico-legal investigation.<sup>29</sup> And, for a thorough and effective investigation of a death, adequate laboratory facilities for both pathology and toxicology are necessary.<sup>30</sup> Since a single physician, and often even a county, cannot afford such facilities, they are generally not available to the Missouri coroner.

The preceding discussion of the present Missouri system of investigating violent or obscure deaths and how it operates, demonstrates that this system is inadequate. The Medico-Legal Committee of the Missouri Bar summed the situation, stating:

In view of the great progress of medical and legal science in these fields [referring to detection and punishment of homicide, civil litigation, industrial compensation proceedings, and public health], and the highly technical and grave importance of such fields, the assignment of work in those fields to the obscure elective office of coroner, where no adequate facilities or personnel are available for the efficient performance of such work, is a futile and useless thing.<sup>31</sup>

There is a need for the investigative tasks presently assigned to the coroner to be fulfilled properly. Some system must: (1) provide documentation of deaths and the cause of deaths subject to public inquiry; (2) aid in the discovery and prosecution of crimes; (3) protect innocent persons who are falsely accused of crime by making known the true facts; (4) disclose impending hazards to the public health; and (5) provide unimpeachable evidence for the judicial process. To achieve these ends, legislation has been introduced in the 75th Missouri Legislature to establish a system of state medical examiners and repeal most of the old coroner statutes.<sup>32</sup>

### III. THE MEDICAL EXAMINER

#### A. Generally

The switch from a coroner system to a medical examiner system is a shift in

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28. During the 1965-1968 term of office, thirty five of one hundred and fifteen county coroners were M.D.'s or D.O.'s in Missouri. In addition, the Jasper County coroner was a D.D.S. (dentist).

29. He must be skilled in pathological anatomy, and should, if possible, have training in forensic pathology. Committee on Medico-legal Problems, *Medical Science in Crime Detection*, 200 J.A.M.A. 2 (Apr. 10, 1967).

30. *Ibid.*

31. Report of the Medico-Legal Committee, 7 J. Mo. BAR 133 (1951).

32. H.B. No. 341 (75th General Assembly); S.B. No. 146 (75th General Assembly). Both bills were read for the first time on January 29, 1969.

the investigative process from a legalistic to a medical (pathological) approach. The investigator, who is a medical examiner, must now reconcile the law and its requirements with scientific and technological advances in forensic pathology and medicine. This means that invariably the medical examiners are physicians and, not infrequently, specially trained in medico-legal techniques. They should be, and generally are, appointed to office on the basis of a merit system, rather than elected. Typically, the coroner's jury and inquests are abolished under the medical examiner system.<sup>33</sup> This, too, is in line with the shift to a medically oriented investigation. The medical examiner statutes create greater authority to require notice of deaths and order autopsies, and establish better facilities (e.g., pathology and toxicology laboratories) than exist under coroner systems. These general features of a modern medical examiner system cause it to be of greater value to the community than the coroner system.

There are several very good medical examiner statutes in force,<sup>34</sup> as well as model<sup>35</sup> medical examiner legislation. They both embrace the previously enumerated features and have served as drafting guidelines for most subsequent state medical examiner legislation, including the 1969 Missouri proposal.<sup>36</sup> Since it has been noted that the present Missouri coroner system is archaic and ineffectual, the remainder of this comment will be devoted to an analysis of its proposed replacement.<sup>37</sup>

### B. *The Missouri Proposal*

The Missouri proposed medical examiner legislation will, of necessity, repeal certain sections of the present coroner statutes.<sup>38</sup> Those sections *not* repealed will, of course, remain law and continue to be effective. Therefore, it is important to examine them and determine what vestiges of the old system will remain. All of the "general provisions"<sup>39</sup> of the coroner statute are left intact. This is unfortunate and disappointing, as this means that technically there will still be an elective office of coroner in Missouri. He will still be unqualified for his primary job assign-

33. Many times, however, inquests and other legal formalities and duties of the coroner are merely transferred to the public prosecutor or sheriff.

34. MD. ANN. CODE art. 22 (1957); VA. CODE ANN. §§ 19.1-33—19.1-46 (1950).

35. A Model State Medico-Legal Investigative System, by the National Municipal League in 1951. Model Post-Mortem Examinations Act, by the National Conference of Commissioners on Uniform State Laws in 1954.

36. Interview with Robert E. Head, attorney and instructor in the Department of Pathology, Forensic Medicine, University of Missouri Medical Center, on November 16, 1968. Mr. Head was one of the drafters of the 1969 Missouri proposed medical examiner legislation.

37. The medical examiner legislation proposed in the Missouri Senate, S.B. No. 146, differs slightly from the House version. Since it is anticipated that the Senate will amend S.B. No. 146 to conform to H.B. No. 341 the latter will be that hereinafter referred to as "*the Missouri proposal*," and is set out in the Appendix to this article.

38. See H.B. No. 341, § A, reprinted in the Appendix to this article.

39. §§ 58.010-58.205, RSMo 1959.

ment, and he will still draw money from the state treasury in salary or fees. He will retain all of his *legal*<sup>40</sup> duties, but all duties of a *medical*<sup>41</sup> nature are withdrawn and given to the medical examiner.<sup>42</sup> Under the Maryland and Virginia acts, the legal duties are transferred to the county prosecutor or sheriff and the entire office of coroner is abolished. The latter system is much better because: (1) it avoids the expense of having both a coroner and a medical examiner; (2) the few minor legal duties are placed in an office already equipped to handle them; (3) it admits of an entirely new and complete system for investigating certain deaths; and (4) a useless coroner's office is not left in the statutes.

The other sections that would not be repealed all relate to the coroner in the City of St. Louis.<sup>43</sup> These are miscellaneous sections concerning compensation, deputies, tenure, and morgues. One provides that the coroner of the City of St. Louis shall perform all the acts and exercise all powers required or authorized by law for all coroners in Missouri;<sup>44</sup> these acts and powers will be limited to legal duties only by enactment of the medical examiner legislation.

The first four sections of the proposed Missouri medical examiner act establish the hierarchy of its organization. At the top is the Missouri Division of Health, followed successively by the State Board of Medical Examiners, the Chief Medical Examiner, his assistants and staff, and then the local or county medical examiners. The State Board will be composed of eight members, representing the health department, law enforcement agencies, the legal profession, and the medical profession. This is good, as the Board is really an advisory committee to the Chief Medical Examiner and should be neither completely medically nor legally oriented in order to insure objectivity. However, by having the Division of Health over the Board, there is a risk of interference in the proper functioning of the system.<sup>45</sup> The

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40. *E.g.*, be conservator of the peace, execute process when the sheriff is disqualified, or perform the duties of sheriff when the office is vacant. See §§ 58.080, 58.180-58.200, RSMo 1959.

41. *E.g.*, investigation, inquest, and autopsy.

42. This is true with but one exception, § 58.155, RSMo 1959, allowing the Jackson County coroner to appoint and salary a qualified pathologist. But without any duties of a medical nature, one might wonder what such pathologist will do for the coroner.

43. §§ 58.210, 58.230, 58.240, 58.250, RSMo 1959.

44. § 58.210, RSMo 1959.

45. This, and the following discussion, necessarily assume that the ambiguity created in the Missouri proposal by using the word "chairman" in two different contexts—*i.e.* the *chairman* as selected by the board from their own members, H.B. No. 341, § 3.2, reprinted in the Appendix to this article, and the *chairman* as defined to be the Chairman of the Missouri State Board of Health, H.B. No. 341, § 1.2, reprinted in the Appendix to this article—is resolved in favor of the latter. This seems to be the bill's intent as when used in subsequent sections, H.B. No. 341, §§ 4.1, 4.2, 15, 16, reprinted in the Appendix to this article, "chairman" is stated separately from the "board," *e.g.*, "... serve at the pleasure of the chairman and board." (emphasis added). Further confusion is added by the reference to the Chairman of the Missouri State Board of Health as this official is titled and should be correctly referred to as the Director of the Division of Health (of Missouri).



Chief Medical Examiner, who is the most important officer in the system, is appointed by the Director of the Division of Health with the approval of the Board, and must serve at the pleasure of the Director and the Board.<sup>46</sup> The Director of the Division of Health may make certain rules and regulations for administering the medical examiner system, but only in conjunction with the rest of the Board.<sup>47</sup> And the greatest powers, those of budgeting and prescribing duties and powers of personnel, are also in the Director of the Division of Health and the Board.<sup>48</sup> It is argued that the other members of the Board will prevent any unwarranted pressures from being exerted. Since the Missouri Constitution would not allow a new division of government to be created within the executive department,<sup>49</sup> the existing and recently reorganized (January 1969) Missouri Division of Health in the Department of Health and Welfare is the logical place for the Board to be structured. By having its own control group, *i.e.*, the State Board of Medical Examiners, the system will have a certain degree of autonomy, and even though the Board and the Director of the Division of Health have the real powers, they could be delegated to the Chief Medical Examiner, resulting in an even greater degree of autonomy.<sup>50</sup> In contrast, Maryland, the first state to adopt the medical examiner system, created and established a new state department of Post-Mortem Examiners, but does require a health department representative to be on the medical examiner board.<sup>51</sup>

The most fundamental and important distinction between the medical examiner and the present Missouri coroner is the job qualification requirement. The Chief Medical Examiner must be a highly trained physician with special skill in forensic pathology.<sup>52</sup> His staff will include other pathologists, toxicologists, and laboratory technicians.<sup>53</sup> County medical examiners—the local investigators—work under the Chief, and must be physicians.<sup>54</sup> Although it is not written into the statutes, most operating medical examiner systems further provide for continuing special medico-legal investigative training for local or county medical examiners. These county medical examiners are appointed by the Chief Medical Examiner with

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46. H.B. No. 341, § 4.1, reprinted in the Appendix to this article.

47. H.B. No. 341, § 14, *supra* note 46.

48. H.B. No. 341, § 15, *supra* note 46.

49. MO. CONST. art. IV, § 12 limits the state executive department to certain named departments and five additional ones to be named by law. These five have already been established, thereby not allowing any other departments.

50. H.B. No. 341, § 15, reprinted in the Appendix to this article.

51. MD. ANN. CODE art. 22, § 1 (1957). The other model state medical examiner system, Virginia, is under the state board of health. VA. CODE ANN. § 19.1-33 (1950).

52. H.B. No. 341, § 4.2, reprinted in the Appendix to this article. There are only 155 forensic pathologists certified by the American Board of Pathology, and only 137 of those are currently in practice. However, Missouri is fortunate in that Dr. Gordon Madge, a highly respected forensic pathologist, is scheduled to assume duties in the Forensic Medicine Department of the University of Missouri Medical Center in June 1969. Per interview with Robert E. Head, *supra* note 36.

53. H.B. No. 341, § 4.4, reprinted in the Appendix to this article.

54. H.B. No. 341, § 4.4, *supra* note 53.

the approval of the Board,<sup>55</sup> and are selected on the basis of merit,<sup>56</sup> not partisan politics. Thus, a special expert, rather than the local undertaker, would be investigating and determining the cause of violent or obscure deaths. This aspect alone seems sufficient reason to enact the medical examiner system.

The local investigator was referred to above as the "county" medical examiner; however, the Chief, with the Board's approval, may designate the same medical examiner to serve more than one county.<sup>57</sup> Ideally, the state should be divided into units larger than counties, due to Missouri's large, often sparsely populated, rural areas. Presently, most coroners do not have a sufficient volume of cases to operate efficiently because they are limited to a one-county jurisdiction.<sup>58</sup>

Efficiency is further enhanced by the medical examiner system's state laboratory. There is to be one central state laboratory which is complete<sup>59</sup> and will serve all the county medical examiners, as well as the Chief and his staff. For reasons of economy this laboratory may be maintained in collaboration with certain public or private institutions in Missouri.<sup>60</sup> This is acceptable so long as the co-operating institution does not become a burden to the proper functioning of the medical examiner system. The laboratory, as part of the system, must be unbiased, competent, and independent of prosecuting or other authorities.

While the present Missouri coroner need only be concerned with deaths by violence or casualty,<sup>61</sup> the proposed medical examiner must investigate a much expanded range of deaths. When any person dies and there is reasonable ground to believe that the death resulted from violence, accident, commission of a felony, from a disease which might be a menace to the public health, or that the death occurred in a suspicious or unusual manner, or in any public institution or prison, the county medical examiner must investigate.<sup>62</sup> The inclusion of "suspicious" deaths in the investigative mandate is particularly good as it may permit the discovery of a criminal act where none was believed to exist prior to investigation. Under the proposed examiner system, these deaths *must* be reported to the medical examiner,<sup>63</sup> whereas the present coroner cannot demand such notification. Not only is there a duty to notify the medical examiner, but a penalty is provided for willful failure or neglect of this duty, or for touching or disturbing the dead body or any article on or near it.<sup>64</sup> This latter provision will significantly aid any subsequent investigation by presenting more fresh and accurate evidence to the investigating medical examiner. This provision goes father than the Maryland

55. H.B. No. 341, § 4.4, *supra* note 53.

56. H.B. No. 341, § 15, *supra* note 53.

57. H.B. No. 341, § 4.5, *supra* note 53.

58. *State ex rel. Horton v. Clark*, 320 Mo. 1190, 9 S.W.2d 635 (Mo. En Banc 1928).

59. This includes toxicological and pathological facilities.

60. H.B. No. 341, § 13, reprinted in the Appendix to this article.

61. § 58.180, RSMo 1959.

62. H.B. No. 341, § 6, reprinted in the Appendix to this article.

63. H.B. No. 341, § 6, *supra* note 62.

64. H.B. No. 341, § 17, *supra* note 62.

medical examiner law which requires notice of death be given to the medical examiner, but imposes no penalty for failing to do so.<sup>65</sup>

Once notified of a death, the medical examiner—usually it will be the county medical examiner, although it could be the Chief or his assistant—would take charge of the body and conduct a preliminary investigation.<sup>66</sup> If this results in a finding of death by natural causes, the death is promptly certified, the body released for burial, and the findings filed with the Chief Medical Examiner's office. But if the findings are otherwise, the county medical examiner would notify the police, the prosecuting attorney, and the Chief Medical Examiner. The Chief or one of his assistants would then conduct a further investigation. This is to be a detailed investigation including obtaining names of witnesses, taking possession of relevant real evidence, and, if necessary, an autopsy. The body is to be released for burial at the earliest possible time. When a thorough and proper investigation is performed by these experts the value of the system is clearly manifested. Not only can they determine the cause and time of death, but also the nature and appearance of the instrument or substance which caused death. In some instances of homicide they may even be able to draw inferences establishing certain physical characteristics of the killer.<sup>67</sup>

Performance of an autopsy is within the discretion of the Chief Medical Examiner; he may order an autopsy over the contrary desires of the decedent's family.<sup>68</sup> The prosecuting attorney, certain chiefs of police, the Superintendent of the Missouri State Highway Patrol, or the Missouri Attorney General may also order an autopsy through the Chief Medical Examiner's office.<sup>69</sup> A detailed description of the findings of the autopsy and the conclusions drawn therefrom must be filed in the office of the Chief Medical Examiner. It is to be noted that, with this system, a skilled medico-legal autopsy would be performed by a highly competent medical examiner or pathologist designated by the Chief. If an autopsy is performed at all under the present coroner inquest system it is generally by the local general practitioner who is usually unqualified,<sup>70</sup> and even then only with the consent of the next-of-kin. The compulsory autopsy is an integral and important part of a good medical examiner system, originating with the Maryland law.<sup>71</sup>

The medical examiner system is not weighted toward the prosecution or the defense. Rather, it is an independent fact finding service. All records of the Chief

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65. MD. ANN. CODE art. 22, § 6 (1957).

66. H.B. No. 341, § 6, *supra* note 62.

67. Committee on Medico-legal Problems, *Medical Science in Crime Detection*, 200 J.A.M.A. 2 (Apr. 10, 1967); vol. 20, series 2, no. 7 Virginia Health Bulletin (Nov. 1967).

68. H.B. No. 341, § 7.1, reprinted in the Appendix to this article.

69. H.B. No. 341, § 7.2, *supra* note 68.

70. General practitioners are typically unexposed to performing autopsies in medical school or in practice. A competent pathologist is needed, and if he is trained in forensic medicine he will be much more proficient in acquiring medico-legal evidence from the autopsy. Committee on Medico-legal Problems, *Medical Science in Crime Detection*, 200 J.A.M.A. 2 (Apr. 10, 1967); Comment, U.K.C. L. REV. 72, 75 (1962).

71. MD. ANN. CODE art. 22, § 7 (1957).

Medical Examiner are available to prosecutors, the attorney general, law enforcement agencies, and attorneys or other representatives for any person having a justifiable interest.<sup>72</sup> This allows both parties to any lawsuit, criminal or civil, to inspect the medical examiner's records concerning their case. These records will include the report on autopsy, the names of witnesses, the specific findings as to cause of death, and all supporting evidence discovered during the investigation, as well as the medical examiner's conclusions. Such information would usually be invaluable to the attorney for either party to a controversy. As a corollary to the right to inspect the records, the Chief, upon order of a court of record, must allow any party to a pertinent action to carry out an independent examination of all specimens collected at the autopsy which are still in his possession.<sup>73</sup> These provisions of the proposed medical examiner system relate to the procedural rules permitting increased discovery, and the public desire for more enlightened and informed judicial proceedings.

Continuing with the concept of more enlightened fact-finding, the proposed legislation specifically provides for the availability of both real and documentary evidence and witnesses in any judicial proceeding.<sup>74</sup> Any medical examiner or specialist employed by the board of medical examiners may be called as witnesses by any party. The records of the board are made available as evidence, and the records of the Chief and of the county medical examiners are deemed competent evidence in any Missouri court.<sup>75</sup> However, any portion of such records which consists of statements by witnesses or other persons not under the direct supervision and control of the medical examiner remains subject to the hearsay objection, and therefore is not deemed competent evidence. These evidence provisions are similar to those contained in the Maryland State Post-Mortem Examiners Law,<sup>76</sup> which is considered very beneficial to the legal profession as it increases the lawyer's ability to conduct an open and fair trial.

The error of the Missouri proposal in not repealing the statutory authorization for a coroner's office to exist is manifested by a provision in the bill to allow the coroner's office, in first class counties and cities of 600,000 or more population (St. Louis), to be "utilized" by the medical examiner in performing any investigations.<sup>77</sup> The only limitation placed by the Missouri proposal on the utilization is that no autopsy shall be performed by the coroner unless he has the qualifications prescribed for a medical examiner, *i.e.*, that he be a physician. What is meant by "utilize" is certainly left open and is ambiguous at best. It can be argued that this is a good provision, as it will permit the City of St. Louis to establish its own internal medical examiner system, which will better serve St. Louis, as well as relieve the state system of the burden of deaths in the state's largest metropolitan area. And, the Chief Medical Examiner and the Board will still have control and

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72. H.B. No. 341, § 8, reprinted in the Appendix to this article.

73. H.B. No. 341, § 7.3, *supra* note 72.

74. H.B. No. 341, § 10, *supra* note 72.

75. H.B. No. 341, § 10.2, *supra* note 72.

76. MD. ANN. CODE art. 22, § 8 (1957).

77. H.B. No. 341, § 16, *supra* note 72.

authority over the St. Louis medical examiner, just as they have over all other medical examiners in Missouri. However, if this is so desirable, then the proposal should be drafted in language which properly—and clearly—establishes such a separate system, while specifically limiting it. Another problem is that if all first class counties were to adopt such a separate system, only rural outstate Missouri would operate under the main state system. It would be difficult, as well as inefficient and uneconomical, to operate under such a plan. In fact, there is no evidence that the City of St. Louis needs or is entitled to such a special system.

One of the types of death to be investigated under the Missouri medical examiner system is that whose cause threatens to be a hazard to the public health. Another provision of the proposal allows the Director of the Division of Health to *require* the Chief (or his assistants) to investigate fully, including autopsy, to obtain additional information as to the cause and nature of the disease causing death in order to institute health control measures.<sup>78</sup> This provision could be subject to abuse. Care must be taken to refrain from burdening the medical examiner with performing collateral health services, *e.g.*, operating a poison information center,<sup>79</sup> which have no connection with his primary job. The possibility of abuse is heightened by the fact that the medical examiner system would be operated under the supervision of the Missouri Division of Health. Whether the medical examiner system will suffer from this provision will depend largely on the Director of the Division of Health. So long as requests for medical examiner assistance are restricted to causes of death it will be no burden, as this is the function of the medical examiner.

#### IV. CONCLUSION

The primary considerations in the evaluation of any system for official medico-legal investigation are the needs of the public and the adequacy of the system to meet those needs. An attempt has been made in this comment to show that a real need exists in Missouri, and that the present coroner system fails to satisfy this need. In recognition of this fact, the Missouri Legislature currently has before it a proposal for a statewide medical examiner system which will more than adequately satisfy the public need. It will expand the types of deaths to be investigated and the archaic and ineffective inquest would be replaced by a thorough and scientific investigation performed by skilled medico-legal specialists with the best laboratory facilities. The investigation will be initiated more quickly due to new notification rules, and it is assured of being initiated by the penalty provisions attendant thereto. The potent weapon of the investigator, the compulsory autopsy, will be more readily available. The legal profession, as well as the general public, will be greatly aided by the availability of complete and competent records maintained by the medical examiner. The few bad features of the proposal which

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78. H.B. No. 341, § 11, *supra* note 72.

79. The purpose of these centers is to provide people with information on the toxicity of various products and recommend emergency treatment when these products are ingested.

have been discussed do not so detract from the otherwise excellent proposal as to even hint at any sound reasons for defeating its enactment. Hopefully, Missouri will have a medical examiner system in operation by 1970.

However, as is true of any public service, the cost of the service must be balanced against the satisfaction of a public need. In other states that have medical examiner systems the relatively high costs of having physicians investigate and maintaining a modern laboratory are reduced by: (1) eliminating previous legal duties; (2) the efficiency of operating in a larger area than one county; (3) the efficiency of having one central laboratory; (4) the economy of maintaining the laboratory in collaboration with another institution; and (5) eliminating completely the previous expense of coroners. Missouri's proposal succeeds in three of these savings. Since the office of coroner is retained along with its accompanying legal duties, Missouri will, in effect, be paying twice. As for actual anticipated cost, the assistant budget director of Missouri estimates it to be approximately \$597,524.<sup>80</sup> This writer does not pretend to have sufficient knowledge of the Missouri budget to say whether this amount is prohibitive or not, but since thirty-seven other states have managed to operate a medical examiner system, it obviously is not impossible.

JOHN M. McILROY JR.

## APPENDIX

### HOUSE BILL NO. 341 75TH GENERAL ASSEMBLY

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 58.220, 58.260, 58.270, 58.280, 58.290, 58.300, 58.310, 58.320, 58.330, 58.340, 58.350, 58.360, 58.370, 58.375, 58.380, 58.390, 58.400, 58.410, 58.420, 58.430, 58.440, 58.451, 58.455, 58.457, 58.460, 58.470, 58.480, 58.490, 58.500, 58.510, 58.520, 58.530, 58.540, 58.550, 58.560, 58.570, 58.580, 58.590, 58.600, 58.610, and 58.620, RSMo 1959, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 to read as follows:

Section 1. 1. As used in this act, the word "board" shall mean the state board of medical examiners.

2. As used in this act the word "chairman" shall mean the Chairman of the Missouri State Board of Health.

Section 2. The provisions of this act shall apply to all cities and counties in the state.

Section 3. 1. The "State Board of Medical Examiners" is established to be composed of the director of the Division of Health, the superintendent of the Missouri state highway patrol, and six persons appointed by the governor by and with the advice and consent of the senate. The terms of office of the appointive

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80. "This figure is based on an average of eighteen cents per capita for the metropolitan population and seven cents per capita for the non-metropolitan population. The average per capita figures were arrived at by averaging the costs in states which now have a similar system in operation." Fiscal Note No. 12169A by Bernard "Doc" Simcoe, Assistant Budget Director of Missouri.

members shall be four years and until their successors are appointed and qualified, except that of the members first appointed, two shall serve two years, two for three years, two for four years. Three of the appointed members shall be attorneys who have been admitted to practice before the Supreme Court of Missouri, three of them shall be persons licensed under the provisions of Chapter 334, RSMo, two of which shall be in the full-time practice or teaching of pathology.

2. The board shall each year select one of its members chairman and one vice chairman. The Chief Medical Examiner shall be appointed permanent secretary and shall serve as an ex-officio member of the board. Each officer shall discharge the duties usually devolving upon his office. All officers shall be eligible for reelection for succeeding years.

3. No member of the board shall receive any salary or other compensation for services rendered as a member of the board, but each member shall be reimbursed for his actual and necessary expenses actually incurred in connection with the business of the board.

4. The board shall render an annual report to the Chairman of the State Board of Health.

Section 4. 1. The Chairman, with the approval of the Board of Medical Examiners, shall appoint a Chief Medical Examiner to serve at the pleasure of the chairman and board.

2. The Chief Medical Examiner shall be a skilled pathologist and microscopist certified by the American Board of Pathology in the field of Forensic Pathology, shall have been in the active practice of Forensic Pathology for at least one year immediately preceding his appointment as Chief Medical Examiner and shall be licensed under the provisions of Chapter 334, RSMo, or shall be a person eligible to be so licensed and who shall become licensed within one year after his appointment.

3. The office of the Chief Medical Examiner shall be known as the office of the Chief Medical Examiner for the state of Missouri.

4. The Chief Medical Examiner with the approval of the chairman and board shall appoint as many assistant state medical examiners, pathologists, toxicologists, laboratory technicians, and other staff members, within the limits of the amount appropriated by the General Assembly, as the chairman and board deems necessary, and within such limits fix the compensation of each. The Chief Medical Examiner with the approval of the chairman and board, may also appoint the county medical examiners on a full or part time basis that are required to carry out the duties set out in this act. The county medical examiners shall be persons qualified for licensure under the provisions of chapter 334, RSMo. The county medical examiners shall be compensated on the basis of fees determined by the chairman and board, one-half of which shall be paid by the county and one-half by the state. The fees shall be computed upon the basis of the actual work performed by each county medical examiner.

5. When deemed advisable in the interests of efficiency or economy, the Chief Medical Examiner with the approval of the chairman and board may designate the same person as county medical examiner to serve two or more counties, in which case one-half of the fees of the examiner shall be paid by the several counties proportionately on the basis of population.

6. County medical examiners shall also be reimbursed their actual and necessary expenses actually incurred in connection with their duties, which shall be paid by the state and their respective counties in the same proportion as their fees.

Section 5. The Chairman, members of the board, and all medical examiners shall before entering upon the duties of their offices, take and subscribe the oath or affirmation required by the constitution of Missouri.

Section 6. When in this state any person dies and there is reasonable ground to believe that the person died as a result of violence or by accident, or as the result of the commission of a felony, or in jail or prison, or in a suspicious or unusual manner, or from a disease which might constitute a threat to the public health, or

under any of the above circumstances in any institution located in the state and maintained in whole or in part at the expense of the state or of its political subdivisions, any peace officer, or the superintendent or medical director of the institution in which the death occurred, or the physician called in attendance shall immediately notify the chief state medical examiner or an assistant state medical examiner or a county medical examiner of the known facts concerning the time, place and the manner and circumstances of death, and any citizen who becomes aware of the death of a person under any of these circumstances shall immediately notify a peace officer of the known facts concerning the time, place and manner and circumstances of the death. The peace officer shall immediately notify the nearest medical examiner. Thereafter the Chief or Assistant Medical Examiner or a county medical examiner shall take charge of the body, ascertain the cause and manner of death, and he shall reduce his findings to writing on forms supplied by the Chief Medical Examiner. If, in the opinion of the attending medical examiner, the death resulted from ascertainable natural causes he shall promptly certify the cause of death to the registrar of deaths in the county, release the body for burial and report his findings to the office of the Chief Medical Examiner. If the attending examiner is a county medical examiner and, if in his opinion, there appear to be facts justifying further investigation, he shall immediately notify the appropriate peace officer and prosecuting attorney in the county or city in which the body was found and also the chief or assistant state medical examiner. In such case, or if the attending examiner is the chief or assistant state medical examiner and, in his opinion, there appear to be facts justifying further investigation, the chief or an assistant state medical examiner shall fully investigate the facts concerning the circumstances of death, including the performance of an autopsy pursuant to Section 7 of this act, taking the names and addresses of as many witnesses thereto as it is practical to obtain, and shall reduce the facts to writing and file them in the office of the state medical examiner. The examiner may also take possession of any evidence which, in his opinion, may be useful in establishing the cause of death, give an itemized receipt to the sheriff or other officer therefor, and hold it subject to disposition according to the rules and regulations of the chairman and board. Thereafter he shall, at the earliest time reasonably possible, release the body for burial.

Section 7. 1. If, in the opinion of the Chief or assistant medical examiner or county medical examiner an autopsy is necessary to determine the cause and/or manner of death, and the death occurred under any of the circumstances set forth in Section 6 of this act, an autopsy shall be ordered and performed by the Chief Medical Examiner, or an assistant state medical examiner or any county medical examiner who may be authorized to do so by the Chief Medical Examiner or any other pathologist so designated and authorized to do so by the Chief Medical Examiner. County medical examiners shall make any other investigations in their respective counties that the Chief Medical Examiner or his assistants shall request and shall file complete reports of them in the office of the Chief Medical Examiner.

2. If a death occurs under any of the circumstances set forth in Section 6 of this act, the state medical examiner or his designate shall order and perform an autopsy if requested in writing to do so by the prosecuting attorney or circuit attorney of the county or city, by the chief of police of cities having a population of thirty thousand inhabitants or more, by the superintendent of the state highway patrol, or by the attorney general of the state. A detailed description of the findings of the autopsy and the conclusions drawn therefrom shall be filed in the office of the Chief Medical Examiner.

3. The Medical Examiner may retain for such time as is necessary the specimens that are required for further anatomic, chemical, toxicologic, and other studies to determine the cause of death. When ordered to do so by a court of record for the state of Missouri, the Chief Medical Examiner shall allow the attorney for any party in an action wherein the findings of the medical examiner are involved to carry out an independent examination of all tissues, fluids, and specimens collected at the autopsy, if the examination does not involve destruction



of the tissues, fluids, or specimens and if a sample of the tissues, fluids, and specimens can practically be severed and given to the attorney. If, for any reason, a sample remains and cannot be severed, the Medical Examiner's office shall, upon written request, make another examination in the presence of such attorney. Nothing in this section shall be construed to require the Medical Examiner to retain samples of tissues, fluids, or specimens for more than the time necessary to determine the cause and manner of death.

Section 8. All records of the office of the Chief Medical Examiner shall be available for inspection by the county prosecuting attorneys or their representatives, by the attorney general or his representatives, by the superintendent of the state highway patrol or his representatives, by the chief of police or his representatives, by a sheriff and by attorneys or other representatives for any party having a justifiable interest in the investigations conducted pursuant to this chapter.

Section 9. Whenever in the opinion of the chief of assistant state medical examiner or county medical examiner, after a full investigation of the circumstances and cause of death, there is reasonable suspicion of violation of the criminal laws in the state, he shall file a written report of his investigation together with any conclusions and recommendations which he has reached as a result thereof with the prosecuting attorney of the county or circuit attorney of the city in which the suspected violation is believed to have occurred or in which the body is found.

Section 10. Any medical examiner and any specialist employed by the board may be called as witnesses at any preliminary hearing, or before any grand jury, at all trials, and the records of the board shall be available as evidence in all courts.

2. The records of the office of the Chief Medical Examiner, and of the county medical examiners, made by themselves or by any one under their direction or supervision, or transcripts thereof certified by such Medical Examiner, shall be received as competent evidence in any court in this State. The records of the results of reviews and examinations of or autopsies upon the bodies of deceased persons by such Medical Examiner, or by any one under his direct supervision or control received in the courts as competent evidence shall not include statements made by witnesses or other persons.

Section 11. On the certification by the director of the division of health that a death may have been caused by some disease endangering the health of a community, and that the director requires additional information of the cause and nature of the disease in order to institute health control measures, the chief or assistant medical examiner shall take charge of the body of such dead person and shall carry out investigation, including the performance of an autopsy which may be requested by the director.

Section 12. In any case where death occurred without medical attendance or where an attending physician refuses to sign a certificate of death, the chief or assistant state medical examiner or county medical examiner shall certify the cause of death.

Section 13. The state board of public buildings shall provide for the state board of medical examiners a suitable state office and laboratory. Laboratories may be established and maintained by the office of the Chief Medical Examiner or may be maintained in collaboration with the University of Missouri School of Medicine, the state highway patrol, or any other public or private institution in the state which has facilities that can be usefully employed performing the duties imposed by this act.

Section 14. The chairman of the state board of health with the state board of medical examiners shall prescribe and use a common seal and may make such rules and regulations not inconsistent with this act nor contrary to law as are necessary for the effective administration of this act.

Section 15. Subject to the other provisions of this act, the chairman and board are authorized within the limits of the amount appropriated by the general

assembly, to appoint, fix the compensation, and prescribe the duties and powers of the officers, experts, specialists, technicians, and other employees whether on a full-time, part-time, or consultation basis, that are necessary to perform the duties detailed in this act. The chairman and board may delegate to the chief state medical examiner the power and authority that it deems reasonable and proper for the effective administration of this act. The chairman and board shall classify full-time positions under this act and establish salary schedules and minimum personnel standards for all positions. All positions shall be filled, selected and appointed on the basis of merit. The chairman and board may provide for the holding of examinations to determine the qualifications of applicants for the positions so classified and, except for temporary appointments of not to exceed one year in duration, personnel shall be appointed on the basis of efficiency and fitness. The board shall establish and enforce fair and reasonable regulations for appointments and for promotions and demotions based upon ratings of efficiency and fitness and for termination for cause.

Section 16. The chairman and board may, in the appointment of professional or clerical staff and in the assignment and administration of the duties of its professional and clerical personnel, act jointly and in collaboration with other agencies of the state and with cities, counties and groups of counties within the state. In counties of the first class and cities having populations of 600,000 people, the Chief or Assistant State Medical Examiner or County Medical Examiner may, insofar as it may be practicable, utilize the office of the coroner of such counties and cities to perform any investigations necessary thereunder.

2. In no case shall the office of coroner be used to perform autopsies unless the coroner or his assistant have the same qualifications as required in this act for the state medical examiner.

Section 17. Any person having knowledge of the death of any person under the circumstances set forth in Section 6 of this act who willfully neglects or refuses to report such death to the officials designated in Section 6 of this act or who, without an order from the chief or assistant state or county medicolegal examiner, or from a peace officer, willfully touches, removes or disturbs the dead body or any article on or near the dead body shall, upon conviction, be found guilty of a misdemeanor.

Section 18. Nothing in this act shall be construed to require a police investigation of autopsies in any case where death occurred without medical attendance solely because the deceased was under treatment by prayer or spiritual means alone in accordance with the tenets and practices of a well-recognized church or religious denomination.