

**OPINION**  
**51-29**

April 3, 1951           (OPINION)

COUNTIES

RE: Coroner - Right to Order Post Mortem Without a Coroner's Jury

Your letter of March 24, 1951, has been received.

You say that in your county you do not have the facilities for holding a dead body, without embalming first, until a coroner's jury meets to decide whether an autopsy is necessary. Embalming before an autopsy can destroy valuable post mortem informations.

You would like to know if a county coroner may order a post mortem examination by a licensed physician of a dead body in order to determine the cause of death: (a) without the consent of the relatives, and (b) without having to wait for a coroner's jury.

Section 23-0613, subsection 2, N.D.R.C., 1943, provides:

"The dead body of a human being may dissected:

\* \* \*

2. When the death occurs under circumstances in which a coroner is authorized by law to hold an inquest upon the body, and a coroner authorized such dissection for the purposes of the inquest; \* \* \*."

Subsection 3 provides for dissection for the purposes of ascertaining the cause of death, but requires the authorization of the next of kin.

It is our opinion that under subsection 2 the consent of next of kin is not required before the examination, in those instances where a coroner is authorized to hold an inquest, and authorizes the examination for the purposes of the inquest.

However, we do believe that such examination cannot be had until the coroner's jury has been called and completed, nor can it be had until the inquest has begun.

Chapter 11-19, N.D.R.C., 1943, which contains the statutes governing the county coroner, provides that the "coroner shall hold inquests upon the dead bodies of such persons only as he believes to have died within his county by unlawful means."

This law does not give the coroner unlimited or arbitrary powers to hold inquests. Unless the evidence shows grounds for the supposition that the deceased has died "by unlawful means," the coroner has nor authority to proceed. In order for a coroner to act at all, he must have reached the conclusion that the person came to his death by unlawful means; otherwise he has nothing to do with the dead body.

The coroner is vested, by virtue of his office, with the discretion to determine for himself whether he should or should not hold an inquest. That is a matter to be exercised by him in an honest and faithful manner. But when he does act, he can only act in the manner provided by law.

Section 11-1904 provides that when the coroner shall have been notified of the finding of a dead body of a person supposed to have died by unlawful means the coroner is required to summon forthwith a sheriff, police officer, or state's attorney, and issue his warrant to such person requiring him to summon forthwith three qualified jurors. Those summoned are to appear before the coroner at the time and place named in the warrant.

It is our opinion that this statute is mandatory.

On the inquest, if the coroner or the jury deems it necessary, the coroner may summon physicians or surgeons to make a scientific examination of the body.

This scientific examination is for the purpose of presenting evidence to the jury to enable to return their inquisition.

We realize the existence of the problem you have presented. However, our laws have provided for a speedy and simple method of calling the jury and holding an inquest. We feel that under ordinary circumstances the inquest could be held within a short period of time, and immediate embalming would not be necessary.

Therefore, we are of the opinion that a scientific examination of the dead body cannot be authorized by the coroner's order, prior to the summoning and completing of the coroner's jury.

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Attorney General