

CORONERS: STATE ANATOMICAL BOARD: Control of deceased persons
to be buried at public expense.

April 12, 1940

Dr. M. D. Overholser, Secretary
Missouri State Anatomical Board
Columbia, Missouri



Dear Sir:

We are in receipt of your request for an opinion,
dated March 20, 1940, which is as follows:

"I have received a letter from Dr.
D. W. Schoemaker, President of the
State Anatomical Board, from which
I quote as follows:

'The Coroner of St. Louis maintains
as follows:

1. That the coroner must hold all
bodies not less than twenty-one days.
2. That the coroner must have all
unclaimed bodies embalmed.
3. That the coroner may deliver
these bodies to an undertaker to be
embalmed and not to the (local) Ana-
tomical Board to be disposed of ac-
cording to the provisions of House
Bill #538, Section 4.
4. That the coroner challenges the
provisions of House Bill #538, Sec-
tion 4, lines 36 to 42, which reads
as follows:

"Whenever any person fails to give
the notice and deliver the body of
a deceased person as required by this
act, and by reason of such failure
such body shall become unfit for ana-

tomical purposes, and is so certified by the duly authorized officer or agent of the Board, such body shall be buried at the expense of the person so failing to notify and deliver such body".

Will you please give us your ruling as to whether or not our State Anatomical Law supersedes the coroner's law in regard to the above points?"

Section 14723, R. S. Mo. 1929, provides that all general laws relating to the coroners of the several counties of the state shall apply to the coroner in the City of St. Louis, and his general duties are set out in Chapter 76, R. S. Mo. 1929. Without setting out such duties in full, it appears that only in the event of death by apparent violence or casualty does the coroner have any duty to perform with regard to any deceased person.

Section 11612, R. S. Mo. 1929, provides as follows:

"Every coroner, so soon as he shall be notified of the dead body of any person, supposed to have come to his death by violence or casualty, being found within his county, shall make out his warrant, directed to the constable of the township where the dead body is found, requiring him forthwith to summon a jury of six good and lawful men, householders of the same township, to appear before such coroner, at the time and place in his warrant expressed, and to inquire, upon a view of the body of the person there lying dead, how and by whom he came to his death."

In addition to the foregoing section, under the heading of "Public Health and Vital Statistics", we find the following (Section 9047):

"In case of any death occurring without medical attendance, it shall be the duty of the undertaker to notify the registrar of such death, and when so notified, the registrar shall inform the local health officer and refer the case to him for immediate investigation and certification, prior to issuing the permit; Provided, that when the local health officer is not a qualified physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; Provided further, that if the circumstances of the case render it probable that the death was caused by unlawful or suspicious means, the registrar shall then refer the case to the coroner for his investigation and certification. And any coroner whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, or the means of death; causes or violence, and whether (probably) accidental, suicidal, or homicidal, as determined by the inquest; and shall, in either case, furnish such information as may be required by the state registrar properly to classify the death."

Section 11626, R. S. Mo. 1929, is that relating to the disposition of bodies by the coroner, and is as follows:

"Whenever an inquest shall be held, if there be no relative or friend of the deceased, nor any person willing to bury the body, nor any person whose duty it is to attend to such burial, the coroner

shall procure a cheap plain coffin, and cause a grave to be dug and the body to be conveyed thereto and buried. It shall be the duty of the coroner, in so doing, to avoid all unnecessary expense, and to render to the court an accurate statement of all money expended by him for such purpose; and the county court shall make to him a reasonable allowance for his actual expenses in procuring the coffin, hauling the body to the grave, digging the grave and burying the body; and also a reasonable allowance, according to the circumstances, for his own time and services in attending to such preparations and burial."

It should be noted that this section is applicable only when an inquest shall be held.

The 1939 Legislature enacted House Bill 538, which was an amendment to repeal Article III of Chapter 53, R. S. Mo. 1929, and enacted a new article in lieu thereof relating to the disposition of dead human bodies. That part of House Bill 538 giving the Missouri State Anatomical Board control of dead human bodies is Section 4, Laws of Missouri, 1939, at page 512, which is as follows:

"Bodies of paupers, how disposed of, -- Superintendents or wardens of penitentiaries, houses of correction and bridewells, hospitals, insane asylums and poor houses, and coroners, sheriffs, jailers, city and county undertakers, and all other state, county, town or city officers having the custody of the body of any deceased person required to be buried at public expense, shall be and hereby are required immediately to notify the secretary of the Board, or the person duly designated by the Board or by its secretary to receive such notice, whenever any such body or bodies

come into his or their custody, charge or control, and shall, without fee or reward, deliver, within a period not to exceed thirty-six (36) hours after death, except in cases within the jurisdiction of a coroner where retention for a longer time may be necessary, such body or bodies into the custody of the Board or its agent or agents to take and remove all such bodies, or otherwise dispose of them: Provided that each educational institution receiving a body from the Board shall hold such body for at least thirty (30) days, during which time any relative or friend of any such deceased person or persons shall have the right to take and receive the dead body from the possession of any person in whose charge or custody it may be found, for the purpose of interment, upon paying the expense of such interment. Each educational institution securing a dead body shall pay all necessary expense incurred in the delivery thereof, including cost of notice to the secretary of the Board or his agent, which notice shall be by telegraph, when necessary to insure immediate notice. A correct record of all such bodies, including the name and date of death, shall be kept in a book provided for that purpose by the county clerk of the county in which such person died, and by the city Health Commissioner of the City of St. Louis, and such record shall be promptly furnished said officer by the person or persons reporting said bodies to the secretary of the Board or his agent. Whenever any person fails to give the notice and deliver the body of a deceased person as required by this act, and by reason of such failure such body shall become unfit for anatomical purposes, and is so

certified by the duly authorized officer or agent of the Board, such body shall be buried at the expense of the person so failing to notify and deliver such body."

This section does not appear to be in any way in conflict with the statutes above set out which define the duties of the various coroners of the state since it excepts from its operation such bodies as are within the jurisdiction of a coroner, and such jurisdiction could operate only where he is holding an inquest. It is also plain from a reading of said Section 4 that, upon completion of the inquest, if no one appears to claim the body and it must be buried at public expense, such body must be turned over to the State Board.

The decision of the coroner as to whether or not an inquest must be held is final in this state since he acts in a judicial capacity in that respect. In *Patrick v. Employers Mutual Liability Insurance Company*, 118 S. W. (2d) 116, 1. S. 123, we find this rule to be stated, as follows:

"In this state a coroner acts judicially in respect to determining whether an inquest shall be held. *Boisliniere v. The Board of County Commissioners*, 32 Mo. 375."

It is apparent that Section 4 of House Bill 538 is directly in conflict with Section 11626, R. S. Mo. 1929. In this case it becomes necessary to apply the general rule of statutory construction, which provides that in the event of a direct conflict between statutes, the one last enacted by the Legislature shall govern. This rule is so generally accepted that no authorities to support it need be cited.

In view of the foregoing authorities, it is our conclusion that all dead human bodies which are unclaimed and required to be buried at public expense are within the exclusive charge and control of the State Anatomical Board and that all public officers, superintendents and wardens of penitentiaries and the other institutions set out in Section 4 of House Bill 538 must deliver such bodies into

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the custody of said board within thirty-six (36) hours after death except that in cases where an inquest is held by any coroner he may retain said body for a longer period, if necessary, for the purposes of such inquest. At the conclusion of such inquest, he is required to surrender the control of such body to the State Anatomical Board, and is subject to the penalty set out in Section 4 of House Bill 538 if he wilfully fails to do so.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

RLH:VC