

COUNTY CORONER:
DEATH CERTIFICATE:
DIVISION OF HEALTH:

A coroner in a county of the fourth class does not have the authority to prepare and submit a certificate of death to the local registrar when a death has allegedly occurred in the county but the body of the decedent has not been discovered.

OPINION NO. 77

May 2, 1972

Honorable J. William Holliday
Prosecuting Attorney
Clark County
220 North Morgan Street
Kahoka, Missouri 63445



Dear Mr. Holliday:

You recently requested an opinion of this office on the following question:

"Does a County Coroner in a County of the Fourth Class have authority under 193.130 and 193.146, RSMO, 1969, to prepare and submit a certificate of death to the local registrar where a death has allegedly occurred in the county by drowning, but no body has been discovered?"

Section 193.130, RSMo 1969, states:

"A certificate of every death or stillbirth shall be filed with the local registrar of the district in which the death or stillbirth occurred within three days after the occurrence is known, or if the place of death or stillbirth is not known then with the local registrar of the district in which the body is found within twenty-four hours thereafter. In every instance a certificate shall be filed prior to interment or other disposition of the body."

Section 193.140 states, in some detail, the procedure to be followed in preparing a death certificate. The last sentence of that provision contains the following language:

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". . . If the circumstances suggest that the death or stillbirth was caused by other than natural causes, the local registrar shall refer the case to the coroner for investigation and certification."

In this case, if we were to hold that the coroner cannot prepare a certificate of death, the question then becomes how can death be proved? The answer to that question can be useful in resolving the question at hand. Of course, the statutory presumption that a seven-year absence indicates death is applicable in this state. This presumption has been extensively described in 25A, C.J.S., Death, Section 9 (1941) as follows:

"In civil cases, the death of a person is to be determined as a question of fact, and may be established in a variety of ways. It may be established judicially by proof of facts which raise a presumption that the person is dead. Where a person has disappeared it is not always necessary to wait for seven years before attempting to prove that he is dead; death may be proved by showing facts from which a reasonable inference would lead to that conclusion.

"The fact of death may be proved by direct evidence or it may be proved in some instances by circumstantial evidence alone. If that fact of death is proved by evidence and inferences therefrom, no presumption as to death, common law or statutory, need be brought into play."

Other jurisdictions have squarely held that you need not find a body to establish the fact of death. Further, you need not wait until the seven-year period has run when evidence can be adduced to show death. The court in In re Estate of Bencel, 189 A.2d 733 (N.J. 1963) rejected the contention that, to show death, someone had to see the death occur and be able to identify the decedent. The court noted that "circumstantial evidence, from which the fact of death may legitimately be inferred, will suffice." In that case, the finding of burned wreckage from a deepsea fishing boat was sufficient evidence to establish the death of a person who was allegedly a passenger on the boat. In Hanzas v. Flavio, 125 N.E. 612 (Mass. 1920), the evidence that a person was seen engaged in battle, after which he was not seen alive was competent on the point whether he was killed in battle. Finally, in Adler v. University Boat Mart,

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Inc., 387 P.2d 509 (Wash. 1963), the court held that death by drowning could be established by circumstantial evidence without the presumption afforded by the lapse of seven years, even though the decedent's body was not recovered from the water in which the decedent was last seen. In that case there was no direct testimony that the other survivors of the boating accident had seen the decedent go down. Thus, it would seem that a judicial determination could be made that death had occurred in this case prior to the lapse of seven years.

Thus, there is much authority for the proposition that the fact of death can be determined without the presence of a body. However, all of the above cited cases deal with situations in which a judicial determination of death was sought. In none of these cases was the precise issue presented by this request involved. However, the fact that none of these cases involved the situations in which the coroner had relied on testimony to issue a certificate of death indicates that, at least in the jurisdictions represented by these cases, coroners interpret their authority in such a way as to require the presence of a body before they can certify that death has occurred.

The last sentence of Section 193.030, RSMo 1969, states that a certificate shall be filed prior to the interment or the disposition of the body. In subsection 3 of Section 193.140 there is a reference to "issuing a permit for burial, cremation or other disposition of the body." It thus appears that the provisions of Sections 193.130 and 193.140 contemplate the presence of a body before the coroner has the authority to act under such sections.

Chapter 58 of the Missouri Revised Statutes is the statutory provision dealing with coroners. Nowhere in this chapter is a coroner in a county of the fourth class specifically granted the authority to prepare and submit a certificate of death or to hold an inquest when no corpse is present. Enclosed is a copy of Opinion No. 6, November 26, 1951, which states that the coroner has the right to declare the cause of death without an inquest when he "views" a body. However, this opinion does not compel the converse of this proposition, that by inquest, he may determine the cause of death when there is no body present. In fact, the inquest procedure, as authorized by Section 58.260 specifically provides that the presence of a dead body is the factor bringing that section into operation. In addition, Section 58.360, RSMo 1969, states that the coroner's jury must view the body before reaching its verdict.

CONCLUSION

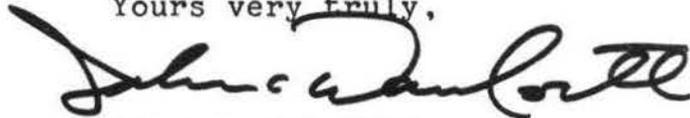
It is the opinion of this office that a coroner in a county of the fourth class does not have the authority to prepare and

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submit a certificate of death to the local registrar when a death has allegedly occurred in the county but the body of the decedent has not been discovered.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Peter H. Ruger.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive, flowing style with a large initial "J".

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 6
11-26-51, Beckham