

CHAPTER 366.

INQUESTS OF THE DEAD.

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366.01 Inquests. Whenever the district attorney shall have notice of the death of any person and from the circumstances surrounding the same there is good reason to believe that murder, manslaughter, negligent homicide, excusable or justifiable homicide has been committed, and the venue of such offense is in his county, he shall forthwith order and require the coroner, deputy coroner, or in the event of the absence or disability of the coroner or deputy coroner, some justice of the peace to take an inquest as to how such person came to his death. In any inquest ordered by the district attorney he shall appear in the inquest representing the state in presenting the evidence. For the purpose of taking such inquest deputy coroners may perform all the duties and exercise all the jurisdiction and powers conferred upon such coroners by this chapter and shall be entitled to the same fees as such coroner for the performance of like duties, except as hereinafter provided. Nothing herein contained shall be construed as preventing such coroner from holding an inquest under the circumstances hereinabove specified without being first notified by the district attorney so to hold such inquest. Such inquest may be held in any county, if within this state, in which there would be venue for the trial of the offense. [1931 c. 134; 1945 c. 198]

Note: District attorney should not withhold his certificate of approval for witnesses' and jurors' fees in coroner's inquest even though district attorney believes there were no grounds for holding inquest. 21 Atty. Gen. 361.

See note to 48.01, citing 26 Atty. Gen. 335. Section 59.77 requires that district attorney examine and approve accounts of coroner. 26 Atty. Gen. 431.

Jurisdiction of federal courts over crimes committed by non-Indians on Indian reservations, under 25 USCA sec. 217, is not exclusive but is concurrent with state courts. Duties of district attorney and coroner under 366.01, with respect to inquest in case of homicide on Indian reservation, are no different from cases occurring elsewhere unless it is known that the guilty party is a tribal Indian. 34 Atty. Gen. 416.

366.02 Jury to be called, when. Whenever any coroner, deputy coroner or justice of the peace shall hold an inquest, he may in his discretion dispense with the summoning of a coroner's jury and conduct the inquest himself and render a verdict therein in the same manner as a coroner's jury would do; or he shall issue a precept to the sheriff or any constable forthwith to summon a jury of 6 good and lawful men of the county to appear before him at the time and place specified in the precept, which precept shall be in substance as follows:

THE STATE OF WISCONSIN, to the sheriff or any constable of the county of:

You are hereby required immediately to summon 6 good and lawful men of the county of, to appear forthwith before me at, in the town of, to inquire how and by what means the person known as came to his death.

Given under my hand this day of, 19...

. . . ., Coroner.

[1945 c. 198]

366.03 Officers' return. Every officer to whom such precept shall be directed and delivered shall forthwith execute the same and make return of the precept, with his proceedings thereon, to the justice who issued the same.

366.04 His neglect; nonappearance of juror. If any officer shall refuse or neglect to execute such precept or to return the same as aforesaid he shall forfeit and pay the sum of five dollars, and every person summoned as a juror as aforesaid, who shall fail to appear without having a reasonable excuse, shall forfeit and pay a sum not exceeding five dollars.

366.05 Other jurors; oath. If 6 jurors shall not appear at the time and place appointed the coroner may require the officer to summon such number of jurors as shall make up the number 6, and when the requisite number so summoned shall appear the

coroner shall administer to them an oath or affirmation in substance as follows, viz.: You do solemnly swear that you will diligently inquire in behalf of this state when, and in what manner and by what means the person known as who is now dead came to his death; that you will return a true inquest thereon according to your knowledge and such evidence as shall be laid before you. [1945 c. 198]

366.06 Witnesses; physician's fees. The coroner may issue subpoenas for witnesses, returnable forthwith or at such time and place as he shall therein direct and the attendance of the persons so served with such subpoenas may be compelled in the manner provided in section 325.12; and it shall be lawful for the coroner taking such inquest, in all such cases, to require by subpoena the attendance of one or more expert witnesses, competent physicians or surgeons for the purpose of making an examination of the body and of testifying as to the result of the same. Such expert witnesses, physicians and surgeons so subpoenaed shall receive fees as expert witnesses the reasonable amount of which shall be determined by the district attorney and the coroner but shall not be less than \$5 for each examination. [1945 c. 198]

366.07 Witness' oath. An oath or affirmation to the following effect shall be administered to each witness by the coroner: You do solemnly swear that the evidence you shall give to this inquest concerning the death of the person known as shall be the truth, the whole truth, and nothing but the truth. [1945 c. 198]

366.08 Evidence to be written; stenographer. In all cases the testimony of all witnesses examined before the inquest shall be reduced to writing by the coroner, or some other person by his direction, and subscribed by the witnesses. Any officer authorized to take inquests may employ a stenographer to take and transcribe the testimony of all witnesses examined at any inquest held by him. Such stenographer shall receive ten cents per folio for all the testimony taken and transcribed by him, his account therefor, after being audited by the proper county board, shall be paid by the county treasurer.

366.09 Verdict. The jury, after hearing the testimony of the witnesses and making all needful inquiries, shall draw up and deliver to the coroner their inquisition under their hands, in which they shall find and certify when, and in what manner and by what means the deceased came to his death, and his name, if known; and if it shall appear that he came to his death by unlawful means the jurors shall further state who was guilty, either as principal or accessory or were in any manner the cause of his death, if known. [1945 c. 198]

Note: Coroner's jury must reach unanimous verdict and can render only such verdict as members can agree upon. 23 Atty. Gen. 578.

366.10 Form of. Such inquisition may be in substance in the following form:

An inquisition taken at , in the county of , on the day of , 19. . . , before, the coroner of said county, as to the cause of the death of the person known as (or a person unknown), there dead, by the jurors whose names are hereunto subscribed, who being duly sworn to inquire on behalf of this state, when, in what manner and by what means the said (or person unknown) came to his death, upon their oaths do say (here insert when, in what manner and by what means, persons, weapons or instruments he was killed or came to his death).

In testimony whereof, the said coroner and the jurors of this inquest have hereunto set their hands the day and year aforesaid. [1945 c. 198]

366.11 Witnesses to be bound. If the jury find that any murder, manslaughter or assault has been committed upon the deceased the coroner shall bind over, by recognizance, such witnesses as he shall think necessary to appear and testify at the next court to be held in the same county at which an indictment for such offense may be found or an information filed; and he shall also return to the same court the requisition, written evidence and all recognizances and examinations by him taken, and may commit to the jail of the county any witness who shall refuse to recognize in such manner as he shall direct.

Note: It is duty of coroner to make return of proceedings at inquest to court regardless of whether or not information has been filed therein. 26 Atty. Gen. 431. which has jurisdiction of subject matter

366.12 Warrant for person charged. If any person charged by the inquest with having committed any such offense shall not be in custody the coroner shall issue a warrant for his apprehension, and such warrant shall be made returnable before any other magistrate or court having cognizance of the case, who shall proceed thereon in the manner that is required of magistrates in like cases.

366.121 Autopsies. The coroner shall have the authority to conduct an autopsy or order the conducting of an autopsy upon the body of a dead person any place within the state of Wisconsin in cases where a coroner's inquest might be had as provided in section 366.01 notwithstanding that no such inquest is ordered or had. [1945 c. 198]

366.13 Burial of body. When any coroner shall take an inquest as to the cause of death of a stranger or, being called for that purpose, shall not think it necessary that an inquest should be taken, he shall cause the body to be decently buried or cremated; and the said coroner shall certify to all the charges incurred in taking any inquest by him and to the expenses of burial or cremation of such dead body; and the same shall be audited by the county board of the proper county and paid out of the county treasury. [1945 c. 198]

366.14 Compensation of officers; witness fees. The sole compensation of the coroner and deputy coroners for taking inquest or making an investigation to determine the necessity to take inquest shall be \$8 for each day and \$4 for each half day actually and necessarily required for the purpose, and 10 cents for each mile actually and necessarily traveled in performing such duty; provided, that any coroner or deputy coroner may be paid an annual salary and allowance for traveling expenses to be established by the county board pursuant to section 59.15 which shall be in lieu of any and all fees, per diem, compensation for services rendered. The compensation of jurors and of constables and witnesses at such inquest shall be the same as is allowed for like services in justice court. [1935 c. 197; 1945 c. 198; 1947 c. 601]

Note: Under 366.14, Stats. 1943, coroner is entitled to fees and mileage and for making investigations to determine necessity for inquest. Such fees should be allowed in any case where coroner was called to view body, and in cases where he acted on his own initiative after receipt of information indicating possibility that inquest might be necessary. 32 Atty. Gen. 277.

Where coroner privately examines witnesses after inquest, he is not entitled to compensation under 366.14, Stats. 1943, since it is neither an investigation to determine the necessity for taking inquest, nor proper procedure in the inquest itself. 34 Atty. Gen. 85.

366.15 Inquests; counties over 500,000. In each and every county whose inhabitants exceed in number 500,000 all the duties mentioned in the foregoing sections of this chapter shall be performed by the medical examiner appointed pursuant to section 59.34 (1), who is hereby invested with the exclusive jurisdiction and power to take inquests therein, and in case of the inability of the medical examiner to attend to such duties the medical examiner may deputize one of his assistants to conduct the inquest. [1943 c. 247]

366.16 Coroner; medical examiner, assistants; salaries; fees; report. Such coroner, medical examiner and medical examiner's assistants authorized by the county board shall be paid semimonthly out of the county treasury of the proper county, for the performance of all their official duties and in lieu of all other compensation salaries to be fixed by the county board of such county. Such coroner, medical examiner, and medical examiner's assistants shall collect for all services which he or they may perform (except in cases where such county is solely liable therefor) all such fees as coroners are by law entitled to receive, and shall keep accurate books of account in which shall be entered from day to day, the items of services rendered, the titles of the proceedings in which and the names of the persons for whom rendered, and the fees charged and received, and shall, at the end of every 3 months, render to the county board of such county and to the county treasurer an accurate report or statement verified by his oath, of all fees and income collected by them or for them during such 3 months and also of all the expenses of the coroner's office during the same time; and at the same time they shall pay to the treasurer of such county all such fees and incomes of every kind, collected by them or any of them, or which they were entitled by law to charge or receive, not theretofore paid to the said treasurer. [1943 c. 247]

366.17 Office and records. It shall be the duty of the county board of such county to provide for the use of such coroner and for the medical examiner suitable offices at the county seat of the county, and it shall be the duty of such medical examiner to keep in his said office proper books containing records of all inquests by him held, setting forth the time and place of holding such inquests and the names of the jurors serving thereon, together with a brief statement of the proceedings thereof. [1943 c. 247]

366.18 Coroner's and medical examiner's bonds. Before entering upon the duties of his office the coroner and the medical examiner of such county shall each deliver to the county clerk thereof a bond, subscribed by 2 or more sufficient sureties, in such penal sum as the county board may determine, conditioned for the faithful performance of all his official duties as set forth in this chapter and that he will faithfully account for and pay to the treasurer of said county all moneys which may come to his hands belonging to said county, and which by virtue of this chapter he is required to account for and pay as aforesaid. [1943 c. 247]

366.19 Cremation of corpse regulated. (1) The body of a deceased person shall not be cremated within 48 hours after its decease unless death was caused by a contagious or infectious disease, and, if the death occurred within the state, the body shall not be received or cremated by any person, firm, copartnership or corporation not authorized by the state board of health to cremate the bodies of the dead until its officers

have received the certificate of burial permit required by law before burial, and a certificate from the coroner of the county, where said person died, and if such person died without the state, then from the coroner of the county where said body is to be cremated, that he has viewed the body and made personal inquiry into the cause and manner of death and is of the opinion that no further examination or judicial inquiry concerning the same is necessary. The heirs or next of kin shall agree with the funeral director as to the final disposition of the cremated remains before such burial permit is issued. The method of such disposition shall be noted on the death certificate and no change in the disposition of such remains shall be permitted. Such disposition shall be consummated within 60 days from time of such notation on the death certificate. The cremated remains or ashes shall not be deposited in the cemetery without due notification and permission of the cemetery authorities.

(2) It shall be the duty of the respective coroners of this state, in any case where the body is to be cremated, to make a careful personal inquiry into the cause and manner of death, and conduct an autopsy or order the conducting of an autopsy, if in their opinion it is necessary to determine the cause and manner of death, and thereupon certify that no further examination or judicial inquiry concerning the same is necessary, if so satisfied, otherwise, or in the event of doubt to proceed as otherwise provided by law.

(3) The coroner shall receive a fee of \$10, to be paid out of the county treasury, for each body so viewed or inquiry made, unless an annual salary has been established by the county board pursuant to section 366.14.

(4) Whoever shall accept, receive or take any body of a deceased person with intent to destroy the same by means of cremation, or who shall cremate or aid and assist in the cremation of any body of a deceased person without having presented such coroner's certificate heretofore provided for shall be deemed guilty of a misdemeanor, and on conviction, shall be fined not less than five hundred dollars nor more than one thousand dollars, or be imprisoned not less than six months nor more than one year.

(5) In counties having a population of 500,000 or more all the powers and duties granted to or imposed upon the coroner or his deputy in this section are vested in the medical examiner created by section 59.34 (1), except that said medical examiner shall not be entitled to the fees provided by subsection (3) of this section. [1929 c. 143; 1935 c. 247; 1941 c. 289; 1943 c. 247; 1943 c. 552 s. 20; 1945 c. 198]

366.20 Reporting deaths required; penalty. (1) All physicians, authorities of hospitals, sanatoriums, institutions (public and private), convalescent homes, authorities of any institution of a like nature, and other persons having knowledge of the death of any person who shall have died under any of the following circumstances listed below, shall immediately report such death to the sheriff, police chief, or coroner of the county wherein such death took place:

- (a) All deaths in which there are unexplained, unusual or suspicious circumstances.
- (b) All homicides.
- (c) All suicides.
- (d) All deaths following an abortion.
- (e) All deaths due to poisoning, whether homicidal, suicidal or accidental.
- (f) All deaths following accidents, whether the injury is or is not the primary cause of death.
- (g) When there is no physician in attendanee.
- (h) When a physician refuses to sign the death certificate.

(2) Any person who shall violate this section shall be punished by a fine of not less than \$5, nor more than \$200, or by imprisonment not less than 30 days nor more than 3 months. [1947 c. 269]