

September 14, 1937

Mr. Thomas C. Foster  
State Mining Inspector  
State Capitol  
Phoenix, Arizona

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Dear Mr. Foster:

We are in receipt of yours of the 4th inst. wherein you set out a portion of a letter addressed to you by Mr. J. C. Anglin, Deputy Mine Inspector, Globe, Arizona. The pertinent facts are that a fatal accident occurred at the Inspiration Mine, August 23, 1937; that upon Mr. Anglin's request a coroner called an inquest and that the county attorney did not appear and refused to allow his stenographer to attend and therefore no record of testimony was made. Upon the foregoing facts you ask our advice upon the following questions:

"Will you please take this matter of inquests in mine accident cases up with the Attorney General's office and get an opinion as to whether inquests are necessary in cases where men die from results of injury in mine accident cases before they can be taken out of the mine.

"In this case the man was almost instantly killed. If the Attorney General rules that inquests are necessary in such cases please advise me if it will be necessary to reopen this case and hold an inquest according to the requirements of the law".

We shall have to advise that we find no provision in law whereby the County Attorney must attend a coroner's inquest or furnish a stenographer therefor. Section 5272 R.C.A. 1928 provides as follows:

"When to be held; summoning jury. When a coroner has been informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he shall go to the place where the body is, and forthwith summon not less than six nor more than twelve persons, qualified by law to serve as jurors, to appear before him forthwith at the place where the

body of the deceased is, to inquire into the cause of the death. (Se. 1379, P.C. '13.) See 6. Cal. Jur. 542; 6 R.C.L. 1166."

The law does not require that the body remain at the place where the accident occurred, but the coroner's jury must view it before proceeding with the inquest. Section 5275 R.C.A. 1928 provides as follows:

"Inquest. After the jury has been sworn and charged by the coroner, they must go together with the coroner to view and examine the body of the deceased person. They must not proceed upon the inquest until they have so viewed the body. After the jury have viewed the body, they may retire to any convenient place to hear the testimony of witnesses and deliberate upon their verdict. For this end the coroner may adjourn the inquest from time to time. (Sec. 1382 P.C. '13,) See 6 R.C.L. 1168."

The law permits but one inquest upon a body. The coroner cannot call another inquest under any circumstances unless that taken is set aside by the court or there has been an error in the identity of the body. Section 5274 R.C.A. 1928 provides as follows:

"Only one inquest though several bodies. There must be but one inquest upon a body, unless that taken is set aside by the court; and there must be but one inquest held upon several bodies of persons who were killed by the same cause, and who died at the same time. Whenever it appears that an error in the identity of the body has been made by the jury, the coroner may call another inquest, and a memorandum of the error must be entered upon the erroneous inquisition. (Sec. 1381, P. C. '13, rev.)"

Section 5279 R.C.A. 1928 provides:

"Testimony to be written and filed with inquest. The testimony of the witnesses examined before the coroner's jury shall be reduced to writing by the coroner, or under his direction, and shall be forthwith filed by him with the inquest, in the office of the clerk of the superior court of the county; if,

however, the person charged with the commission of the offense be arrested before it can be filed the coroner shall deliver the same to the magistrate before whom such person may be brought, who shall return the same, with the complaint and papers taken before him, to the office of the clerk of the superior court of the county. (Secs. 1387-8 P. C. '13, cons. & rev.)"

The facts show that no record of testimony was taken in the above case. The taking of testimony is the duty of the coroner as provided by the above quoted section. Please be advised that Section 2285 R. C.A. 1928 provides:

"Accidents to be reported to inspector; investigation. Whenever loss of life or serious accident shall occur in any mine the operator shall give immediate notice thereof, and report the facts in writing to the mine inspector. The refusal or failure to so report shall be a misdemeanor. The inspector, upon receipt of notice of such accident, shall investigate the same and make a report to be filed in his office. In case of loss of life the inspector shall appear at the coroner's inquest held respecting such accident, and may examine the witnesses. If the inspector considers the facts warrant it he shall cause a copy of the report, or a copy of the testimony, together with the verdict of the coroner's jury, and all papers in his hands relating thereto, to be forwarded to the attorney for the county in which the accident or loss of life occurred, together with an accompanying statement of the inspector, showing in what particular he believes the law to have been violated. (Sec. 13, Ch. 33, L. '12,; 4065, R.S.'13, rec.)"

You will notice from the above quoted section that in cases of mine accidents a duty is imposed upon the inspector to investigate, and in case of death the additional duty is imposed upon him to appear at the inquest, and there he may examine the witnesses. As the only irregularity of the inquest held in the above case was in the

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failure of the coroner to reduce the testimony of the witnesses to writing, the inspector may send a copy of his report, the verdict of the coroner's jury and all papers relating thereto to the County Attorney, stating where the loss of life occurred with a statement of the inspector showing in what particulars, if any, the law has been violated.

Respectfully submitted,

JOE CONWAY  
Attorney General

ALBERT M. GARCIA  
Assistant Attorney General

E. G. FRAZIER  
Special Assistant  
Attorney General