PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS

FOR THE TWO YEARS

JULY 1, 1928 - JUNE 30, 1930

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1929-1930

POST-MORTEMS

July 9, 1930

T. A. Devan, M. D.,
Eastern Maine General Hospital,
Bangor, Maine
Dear Dr. Devan:

I have your inquiry regarding post-mortem examinations.

We have a statute which was passed at the instance of the Maine Medical School for the disposal of unclaimed bodies. This statute is probably familiar to you. It is comprised in the first eight sections of Chapter 18 of the Revised Statutes of 1916. You will notice that Section 3 of this act permits the superintendent and medical staff of the Bangor State Hospital to hold an autopsy "for the advancement of science" when no person satisfies the superintendent and trustees that he or she is a member of the family, family connection or next of kin of the deceased and wishes to claim the body for burial.

We also have statutory provisions against interment or disinterment without permit (R. S. Chapter 64, Section 29), and against the abandonment of human bodies (Chapter 126, Section 42). Our Law Court held in Bath v. Harpswell, 110 Me. 391 that the overseers of the poor might give a body a Christian burial at the expense of the city notwithstanding the medical school act first above referred to.

A medical examiner or prosecuting officer can, of course, order an autopsy in connection with the investigation of suspected crime. See the medical examiner statute, R. S. Chapter 141, as amended by P. L. 1917, Chapter 252, and particularly sections 5, 6 and 7. Section 8 of this act names expressly the persons entitled to possession of the dead body after an autopsy, in the following order:

1st—Husband or wife
2d—Next of kin
3d—Friends

General principles of law regarding autopsies are discussed in a note in L. R. A. 1918 D, p. 404. Aside from statute it is clear that an autopsy cannot be made without the consent of those entitled to the custody of the corpse. Without such consent or statutory authority any person performing an autopsy is liable in damages, and a claim that the performance of the autopsy was necessary in order to determine the causes of death is no answer to such a suit.

Reference to the statutes above cited will answer most of the questions which you put. The statute does not define the order of choice as among relatives other than surviving spouse. Presumably, the next in order of relationship would be the ones to give or withhold permission for an autopsy. Of a minor I should say that parents would come first. Children would naturally come ahead of brothers and collateral relatives. There is no classification as among other persons.

There is no requirement that authority to perform an autopsy must be in writing. Under R. S. Chapter 18, Section 3, you need merely to be satisfied that no person who is a member of the family or family connection or next of kin of the deceased wishes to claim the body for burial. In the case of patients who are not public charges an express authorization given by any one person entitled to the body would seem to be sufficient. This is plain in the case of a widow or widower. Such widow or widower has a right to the body, and therefore a right to give the consent for an autopsy. Where several persons seem to have an equal claim to the body it would be my view that the express consent of any one of those persons would be sufficient to authorize the autopsy, but in the absence of an express consent from one of those persons there would be a risk involved in performing the autopsy on a person not a public charge or a stranger within the provisions of Chapter 18, Section 3.

I trust this answers your inquiry and should be glad to be of any further assistance that I can.

Very truly yours,
CLEMENT F. ROBINSON
Attorney General

COMMITMENT OF CHILDREN

February 27, 1930

Dr. Stephen E. Vosburgh,
Superintendent, Pownal State School,
Pownal, Maine
Dear Dr. Vosburgh:

I have your inquiry regarding the legality of the commitment from a probate court to the State School of a child of eight years, at the request of the State Board of Children's Guardians without notice by publication or to any person.

It seems to me that this commitment was legal.

By Revised Statutes, Chapter 146, Section 49, a judge of probate may commit to the Pownal State School "after due notice and hearing."

By Revised Statutes, Chapter 67, Section 50, "due notice" denotes public or personal notice at the discretion of the judge.

By Revised Statutes, Chapter 64, Section 54, as amended by P. L. 1917, Chapter 297; P. L. 1919, Chapter 171, the State Board of Children's Guardians to whom a child is committed has "full custody and control over said child;" and the order and decree divests the "parents of all legal rights," "as if the child were adopted."

Putting these statutes together I should say that it is not necessary to give notice by publication or to any individual. The child himself is too young to be entitled to notice; his parents have no legal right to it; the State Board having brought the proceeding obviously has notice.