STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

service of the sentence is mandatory, even though it is not so stated on the mittimus.

JAMES GLYNN FROST
Deputy Attorney General

April 1, 1957

To Norman H. Nickerson, M. D., Medical Examiner

Re: Death on a Railroad

. . . You inquire if a medical examiner should be called on any case where a man is killed by a train or accidentally killed on a railroad.

Your question arises because of an information bulletin issued by the Bangor and Aroostook Railroad Company, dated November 22, 1946, which bulletin was shown to you at the time you examined the dead body of a person killed by a train.

In brief, the aforesaid bulletin advises employees of the B & A that since 1915 investigation of cases of accidental death on a railroad rests with the Public Utilities Commission and not with medical examiners.

The bulletin states:

"3. Whenever a person is accidentally killed on the railroad, employes should immediately notify the Superintendent and the head of their Department. The body should be suitably cared for by removing it to a suitable building or car, properly covering and placing it in care of a responsible employe, town officer or undertaker, or it may be turned over to relatives or friends. Trains need not be held after proper arrangements for caring for the body have been made and names of all witnesses procured. All of the facts, of course, should be reported to the proper officers."

Our examination of the law relating to dead bodies convinces us that the Bangor and Aroostook bulletin does not accurately express the law as it exists today; and because your question concerns a vital problem in the field of legal medicine we believe an examination of the laws on the subject is required.

Chapter 332, Section 4, Public Laws of 1915, stated:

> "It shall be the duty of anyone finding a body of any person who may be supposed to have come to his death by violence or unlawful act to immediately notify one of the municipal officers . . ."

On September 9, 1915, the then Attorney General advised the Public Utilities Commission that it was not necessary "for a public utility in a case where death is clearly accidental and there is no reason to suppose that the person came to his death by any unlawful act, to leave the body where it is found and call a medical examiner . . ."

An opinon of such substance was consistent with the law of the times when written. See *State v. Bellows,* 62 Ohio 307 (1900), where a death "caused by violence," in a statute substantially the same as ours of 1915, was defined as

> "death caused by unlawful means, such as usually call for the punishment of those who employ them."

The legislative history of amendments to our laws relative to medical examiners reveals, however, a change in the philosophy underlying the purpose of such laws.

In 1917, the law referred to was amended as follows (Chapter 252. Sec. 2, P. L. 1917):

> "Whoever finds the body of any person who may be supposed to have come to his death by violence or unlawful act, *of some person or persons, the committing of which act is punishable in accordance with sections one, two and three of chapter one hundred twenty of the revised statutes,* shall immediately notify one of the municipal officers . . ."

The sections of the Revised Statutes referred to dealt with the crimes of murder, manslaughter, and carelessly shooting a human being while engaged in hunting.

The words above italicized, except as changed to conform with the chapter number of the 1930 revision, were deleted by Chapter 241, Section 2, P. L. 1939, so that the statute again read substantially as it did in 1915.

In 1947, Chapter 190, Section 2, Public Laws, the statute was amended in the following manner (italicized words new):

> "Whoever finds the body of any person who may be supposed to have come to his death by *criminal violence, or by suicide, or in any suspicious or unusual manner,* shall immediately notify one of the municipal officers . . ."

At this point it can be seen that, though the statute had been broadened to include examination of dead bodies not hitherto examined, the word "violence" was limited to criminal violence. The intent, however, was not to limit examination to deaths caused by criminal violence or unlawful act, but also suspicious or unusual deaths.

In 1955, the legislature amended the statute in such a manner that its intent is quite clear. The word "criminal" (defining the type of violence) was eliminated and examination of bodies otherwise extended as follows (Chapter 326, P. R. 1955):

> "Whoever finds the body of any person who is supposed to have come to his death by violence or by the action of chemical, thermal or electrical agents or following abortion, or suddenly when not disabled by recognized disease or who has come to his death unexplained or unattended, shall immediately notify one of the municipal officers . . ."

The deliberate striking by the legislature of the adjective "criminal," defining the type of violence to be investigated, shows a clear intent that a death from violence should be investigated by a medical examiner, even though such death is not supposed to have been caused by a criminal act.

Such amendment reveals a realization on the part of the legislature of the great strides that have been made in the medico-legal field, and a determination that all possible steps should be taken to uncover criminal acts which result in death.

We are of the opinion that a death resulting from a railroad accident is a "violent" death, and, in view of the above discussion, we are of the further opinion that a medical examiner should be notified of such death.

FRANK F. HARDING
Attorney General