

1972 S.C. Op. Atty. Gen. 147 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3323, 1972 WL 20462

Office of the Attorney General

State of South Carolina

Opinion No. 3323

June 5, 1972

***1 Re: Coroners' Powers and Duties**

Honorable George P. Murray

Berkeley County Coroner

Moncke Corner, S. C.

Dear Mr. Murray:

You have requested that this office advise you as to the following questions:

1. How many jurors are required to sit on a coroner's jury?

a. Can a lesser number of jurors serve if all parties agree?

b. Must the verdict be unanimous?

c. Who picks jurors for the coroner's jury?

Section 17–103 of the Code of Laws of South Carolina (1962) requires that '[o]f the jurors summoned and appearing the coroner shall swear six.' Before 1914, twelve or more jurors were required for a coroner's inquest. (1839 STAT., Act No. 2782 at 55) Then in 1914, the statute was amended by striking out the words 'twelve or more,' in the second printed line thereof, and inserting in lieu thereof the word 'six,' . . . (1914 STAT., Act No. 293 at 517) Furthermore, Section 17–103 in conjunction with Section 17–111 seems to make a six man coroner's jury mandatory and to prohibit a proceeding unless six jurors have been sworn. Section 17–111 provides:

If all or any part of the jurors shall fail to reappear at the day and place to which they were adjourned, the coroner shall issue his warrant to supply the places of the absent jury or of so many of the jurors absent as may be necessary. And the jurors last summoned shall be sworn and charged as those first summoned were and shall have the same power and be liable to the same penalties.

The above provisions expressly provide for the replacement of any or all jurors who fail to appear after an adjournment. Since Section 17–103 of the Code of Laws of South Carolina (1962) requires the coroner's inquest to commence with a six man jury, Section 17–111 of the Code requires the replacement of any absent jurors and there is no express provision allowing the six man jury to be waived, the parties to a coroner's inquest cannot, by agreement, proceed with a lesser number of jurors. Finally, in State v. Hall, 137 S.C. 256, 101 S.E. 662 (1919) the Supreme Court of South Carolina stated that in a capital case, the defendant cannot waive his right to a trial by a twelve man jury and proceed with only eleven men. There have been no South Carolina proceeding, dealing with a coroner's inquest, with less than six jurors. However, since the coroner's inquest possibly lays the foundation for a capital case, it is only logical that the requirement of a complete jury remain inviolate.

Section 17–119, Code of Laws of South Carolina (1962) provides for the form of verdict of a coroner's jury, but is silent as to whether or not the verdict must be unanimous. There has been no authority found allowing any verdict other than a unanimous one.

There is no provision in our statutes authorizing a majority decision and apparently a unanimous verdict is contemplated. . . . It is our opinion that a unanimous verdict is required. 1965 Op. Atty. Gen.

*2 Jurors for a coroner's inquest are picked by the sheriff or constables of the county in which the inquest is to be held. When the coroner upon the required preliminary examination shall determine that a formal inquest shall be held he shall make out his warrant directed to all or any of them forthwith to summon a jury of fourteen men of the county within a radius of ten miles to appear before him at the time and place specified in the warrant. Section 17–98, Code of Laws of South Carolina (1962).

2. Does the coroner have the right to take out an arrest warrant either before or after an inquest?

The coroner has the right to take out an arrest warrant only after an inquest has been held. If the finding of the inquest be wilfull killing by the hands or means of another the coroner shall forthwith issue his warrant directed to the sheriff or one or more constables for the county for all the persons implicated by such finding. Section 17–151, Code of Laws of South Carolina (1962).

The Code is silent as to the power of a coroner to issue an arrest warrant before a finding of foul play at an inquest. Since the purpose of a coroner's inquest is to discover how the decedent died, there can be no suspect before the inquest is completed.

3. Does the coroner have the right to set bond and/or to hold a material witness before an inquest?

Pursuant to Section 17–108, Code of Laws of South Carolina (1962), a coroner has the power to set a recognizance bond for a witness and to hold a witness material to an inquest.

Every person summoned or required to give evidence and disregarding such summons or refusing to testify, without such excuse as shall be lawful and sufficient, shall forfeit and pay the sum of twenty dollars and shall be committed to jail by the coroner until the next court of general sessions or until he testifies and is discharged by the coroner, such forfeiture to be recovered by indictment at the next court of general sessions for the county . . . And the coroner shall bind such witness so appearing by recognizance, with good and sufficient surety, to appear at the next court of general sessions to stand his trial and a witness refusing to enter into such recognizance shall be forthwith committed to the jail of the county by commitment, under the hand and seal of the coroner, there to be kept until he enters into such recognizance as before required.

I trust this has been sufficient to answer the questions which you posed. If we may be of any further assistance, please do not hesitate to call or write.

Very truly yours,

Timothy G. Quinn
Assistant Attorney General

1972 S.C. Op. Atty. Gen. 147 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3323, 1972 WL 20462