

ANDERSON LAWSUIT

Authority of Coroner

THIS IS THE McLEAN COUNTY LAWSUIT THAT DEFINES THE CORONER'S
AUTHORITY

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE

COUNTY OF MC LEAN ELEVENTH JUDICIAL CIRCUIT

WILLIAM T. ANDERSON, Coroner

of McLean County,

Plaintiff,

No. 87-KR-92

CITY OF BLOOMINGTON and

THE POLICE DEPARTMENT OF

THE CITY OF BLOOMINGTON,

Defendants.

ORDER

This case is a suit for declaratory judgment brought by William T. Anderson, in his capacity as Coroner of McLean County, against the City of Bloomington, and the Police Department of the City of Bloomington. The court has allowed the petition of the Illinois Coroner's Association to intervene as an additional party-plaintiff and has allowed the Petition of the Illinois Association of Chiefs of Police, Inc. and the Illinois Sheriff's Association for leave to intervene as additional parties-defendant. The court has also allowed the petition of Charles Reynard, the State's Attorney of McLean County, to intervene generally in this cause without aligning the State's Attorney with either the plaintiff or the defendant.

This case arises out of an incident which occurred at 1101 North Clinton Boulevard in the City of Bloomington, in the County of McLean, in the State of Illinois on September 12, 1987. Sometime during the early morning hours of that date, the fire department of the City of Bloomington was summoned to the residence of Cecil R. Biddell at the North Clinton Boulevard address to extinguish a fire. Upon their arrival, firemen found a fire in progress which appeared to them to have more than one point of origin, one of the points of origin being in the upstairs area. in the southeast portion of the home, and another appearing to be in the first floor kitchen area in the southeast corner of the home. The firemen immediately commenced operations to extinguish the fire. In the course of performing their duties in extinguishing the fires, one of the firemen noticed the body of an adult man situated in a chair in a living room area in the northwest corner of the first floor of the dwelling. The man appeared to firemen to be either unconscious or dead. The City of Bloomington Rescue Squad was summoned, and the body was removed to the emergency room of Brokaw Hospital in the Town of Normal while firemen proceeded to extinguish the fire in the house.

Emergency room personnel at Brokaw Hospital identified the body as being that of Cecil R. Biddell, the owner of the 1101 North Clinton Boulevard residence. Mr. Biddell was pronounced dead in the emergency room of Brokaw Hospital at 3:42 AM. on September 12, 1987, and at 3:56 A.M., the nursing supervisor of the Brokaw Hospital notified one of the plaintiff's deputies, Edward W. Book, Jr. of Mr. Biddell's death and of the location of Biddell's body.

At 4:00 A.M., the Police Department of the City of Bloomington was called to the 1101 North Clinton Boulevard address to investigate a possible arson and homicide. Lt. Wayne Emmett, the Chief of Detectives arrived while the fire department was still present

extinguishing the fire. When he arrived, the body of Biddell had already been removed by the Rescue Squad to Brokaw Hospital.

Deputy Coroner Edward Book took charge of the body at the Brokaw Hospital Emergency Room and ordered that the body be removed to the morgue of the hospital where he placed the body under a secure lock. Deputy Coroner Book reported to the plaintiff, William T. Anderson, that Cecil Biddell had died, that the body had been removed from Biddell's residence to the emergency room of Brokaw Hospital where the pronouncement of death occurred, and that the body had been secured under secure lock in the Brokaw hospital morgue. He further notified Anderson that he was enroute to what he believed to be the scene of death: The 1101 North Clinton Boulevard address of the decedent. At the time that he received this information, Coroner Anderson, was in his home in Cheney's Grove Township approximately 30 miles from the Clinton Boulevard location. Coroner Anderson went to the 1101 North Clinton Boulevard address but did not enter. He talked briefly with Deputy McLean County Coroner Book who reported to the coroner that the body bore puncture wounds and other marks and abrasions. After confirming that the body was locked securely in the morgue, the coroner, accompanied by Deputy Coroner Book returned to the 1101 North Clinton Boulevard address. They arrived between 5:15 A.M. and 5:30 A.M. Notwithstanding the fact that the supposed scene of the crime had already been invaded by firemen in the course of extinguishing the blaze and emergency medical technicians from the Rescue Squad in removing the body, the coroner and his deputy were denied access by members of the Police Department of the City of Bloomington to the living room in the northwest corner of the first floor of the dwelling where the body had allegedly been located. The crime scene technician from the State of Illinois, Department of State Police, arrived at 6:15 A.M., and at 7:30 A.M. a search warrant was issued for the search of the Clinton Boulevard residence. At 8:00 A.M. the police still declined to permit Coroner Anderson to enter the premises when he announced his intention to do so. When he attempted to enter the residence, he was forcibly prevented from doing so by Lt. Wayne Emmett of the City of

Bloomington Police Department who purported to place the coroner under arrest. The coroner then purported to arrest Lt. Emmett, and Emmett handcuffed Anderson. Subsequently, after conferring with the State's Attorney, the restraints were removed from Anderson and no charges were filed by the members of the Police Department against the coroner.

The coroner then brought this suit for declaratory relief seeking to have the court declare the scope of the duties and the authority of the coroner relative to other law enforcement officials, particularly those of the Police Department of the City of Bloomington.

A declaratory judgment is a remedy created by the statutes which was unknown at common law or in the courts of chancery. *Zurich Insurance Co. vs. Northbrook Excess & Surplus Insurance Co.*, 145 Ill. App. 3d 175, 494 N.E. 2d 634 (1996). Section 2-701 of the Code of Civil Procedure of the State of Illinois provides:

(a) No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested. The foregoing enumeration does not exclude other cases of actual controversy. The court shall refuse to enter a declaratory judgment or order, if it appears that the judgment or order, would not terminate the controversy or some part thereof, giving rise to the proceeding. In no event shall the court entertain any action or proceeding for a declaratory judgment or order involving any political question where the defendant is a state officer whose election is provided for by the constitution; however, nothing herein shall prevent the court from

entertaining any such action or proceeding for a declaratory judgment or order if such question also involves a constitutional convention or the construction of a statute involving a constitutional convention.

(b) Declaration of rights, as herein provided for, may be obtained by means of a pleading seeking that relief alone, or as incident to or part of a complaint, counterclaim or other pleading seeking other relief as well, and if a declaration of rights is the only relief asked, the case may be set for early hearing as in the case of a motion.

(c) If further relief based upon a declaration of rights becomes necessary or proper after the declaration has been made, application may be made by petition to any court having jurisdiction for an order directed to any party or parties whose rights have been determined by the declaration to show cause why further relief should not be granted forthwith, upon reasonable notice prescribed by the court in its orders.

(d) If any proceeding under this section involves the determination of issues of fact triable by a jury, they shall be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court, in which the proceeding is pending.

(e) Unless the parties agree by stipulation as to the allowance thereof, costs in the proceedings authorized by this section shall be allowed in accordance with rules. In the absence of rules, the practice in other civil action shall be followed if applicable, and if not applicable, the costs may be taxed as to the court seems just.

In general, an action for a declaratory judgment must consist of a concrete dispute permitting an immediate and definitive determination of the party's rights, the resolution of which will aid in terminating the controversy or some part of it. *Miller vs. The County of Lake*, 79 Ill. 2d 481, 404 N.E. 2d 222 (1980). Courts should not normally issue advisory

opinions, except when required to do so by statute, or pass judgment on an abstract proposition of law. *Howlett vs. Scott*, 69 Ill. 2d 135, 370 N.E. 2d 1036 (1977)

Where a plaintiff attempts to obtain a declaratory judgment as to the legality of a past or future action, the courts will examine whether the plaintiff is under a threat of immediate prosecution for such action. If not, the case will be deemed not to be right for a declaratory judgment. *Miller vs. The County of Lake*, 79 Ill. 2d 481, 404 N.E. 2d 222 (1980)

There is a legitimate question as to whether the controversy in this case is now moot by virtue of the fact that the Police Department of the City of Bloomington unshackled the plaintiff after conferring with the State's Attorney of McLean County. Even moot questions may, however, be considered, if the public interest is substantial. *Illinois News Broadcasters Association vs. The City of Springfield*, 22 Ill. App. 3d 226, 317 N.E. 2d 288 (1974). In determining whether the public interest is sufficient to overcome mootness, the court should consider the public nature of the question, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question. *Illinois News Broadcasters of Association vs. The City of Springfield*, 22 Ill. App. 3d 226, 317 N.E. 2d 288 (1974). In this case the public clearly has an interest in determining the nature and scope of the duties and authority of the office of coroner. Moreover, it is highly desirable that an authoritative determination be made as to the nature and scope of the duties of the office of coroner for the future guidance of both coroners and other peace officers. At the trial of this case, the court heard testimony from Chris Boyer, the Coroner of Adams County; Neil Birchler, the Coroner of Randolph County; James Orrison, the Coroner of Kankakee County; and Lyle Irvin, the Coroner of Vermillion County; as well as Melvin Broderick, the Deputy Coroner of Jo Daviess County as to disputes which have arisen in their counties with respect to other peace officers attempting to prevent the coroner from entry upon the alleged scene of a death. This testimony is convincing that there is a strong

likelihood of future recurrence of the question as to the nature and scope of the authority and duty of a coroner.

For these reasons, the court finds that there is an actual controversy which is ripe for declaratory relief and that the fact that the plaintiff was released without being charged in this case does not render the question moot and thereby not a proper subject for declaratory relief. The plaintiff has demonstrated that there was a threat of arrest if he entered the alleged scene of the death and a resulting injury and that he has an interest in the construction of the statute defining the duties and authority of the office of coroner. See *Illinois Game Fowl Breeders Association vs. Block*, 75 Ill. 2d 443, 389 N.E. 2d 529 (1979).

Therefore, the court concludes that the plaintiff has properly filed a petition for declaratory relief. The authority of the office of coroner is derived from the constitution and statutes of the State of Illinois. The constitution of the State of Illinois provides that each county may elect or appoint a coroner. ILL. CONST. art. VII, Â§4 (c) The constitution further provides that county officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance. ILL. CONST. art. VII, Â§4(d).

An examination of the statutes of the State of Illinois reveals that the legislature has very broadly defined the duties of the office of coroner. The law provides:

"Each coroner shall be conservator of the peace in his county, and in the performance of his duties as such, shall have the same powers as the sheriff" S.H.A. Ch. 31, 56.

The statutes further provide:

"Every coroner, whenever, as soon as he knows or is informed that the dead body of any person is found, or lying within his county, whose death is suspected of being:

(a) A sudden or violent death, whether apparently suicidal, homicidal or accidental, including but not limited to deaths apparently caused or contributed to by thermal, traumatic, chemical, electrical or radiational injury, or a complication of any of them, or by drowning or suffocation;

(b) A maternal or fetal death due to abortion, or any death due to a sex crime or a crime against nature;

(c) A death where the circumstances are suspicious, obscure, mysterious or otherwise unexplained or where, in the written opinion of the attending physician, the cause of death is not determined;

(d) A death where addiction to alcohol or to any drug may have been a contributory cause;
or

(e) A death where the decedent was not attended by a licensed physician;

shall go to the place where the death body is, and take charge of the same and shall make a preliminary investigation into the circumstances of the death..." S.H.A. Ch. 31, .

The statutes further provide:

"No dead body which may be subject to the terms of this Act, or the personal property of such a deceased person, shall be handled, moved, disturbed, embalmed or removed from the place of death by any person, except with the permission of the coroner, unless the

same shall be necessary to protect such body or property from damage or destruction, or unless necessary to protect life, safety, or health. Any person knowingly violating the provisions of this Section is guilty of a Class A misdemeanor." S.H.A. Ch. 31, Â§10.5.

In addition to the constitutional and statutory foundations for the authority and duties of the office of coroner, the 1970 Constitution of Illinois also clothes the coroner with common law duties, powers and functions.

The office of coroner is a common law office, *United States Life Insurance Co. vs. Vocke*, 129 Ill. 557, 22 N.E. 467 (1889). The office of coroner is of such great antiquity that its commencement is not known, but its duties were defined by statute as early as the fourth year of the reign of King Edward I of England. *United States Life Insurance Co. vs. Vocke*, 129 Ill. 2d 557, 22 N.E. 467 (1889). The Illinois Supreme Court has observed that coroners are very ancient officers at common law. In England, they were chosen by the freeholders of the county, and their powers, when appointed, are either judicial or ministerial. The judicial power of a coroner is, first, to inquire into and concerning the death of a man, when one is slain or dies suddenly, by a jury of inquest, and at common law this had to be done at the place where the death happened. *United States Life Insurance Co. vs. Vocke*, 129 Ill. 557, 22 N.E. 467 (1889).

The office of coroner, as the name indicates, related to the crown as a representative of the government. *Peoria Cordage Co. vs. Industrial Board*, 284 Ill. 90, 119 N.E. 996 (1918). The coroner's principal official duty was to inquire into the manner by which persons came to their death where there was any reason to suppose that death might not have been due to natural means and to institute prosecutions for homicide. *Peoria Cordage Co. vs. Industrial Board*, 284 Ill. 90, 119 N.E. 996 (1918). The Illinois Supreme Court found in 1918 that the general nature of the office of coroner remains the same as at common law, but the finding of the coroner's jury is advisory to the public authorities charged with the administration of

the criminal law, and the duties of the coroner and his authority are defined by statute.

Peoria Cordage Co. vs. Industrial Board, 284 Ill. 90, 119 N.E. 996 (1918)

The statutes defining the duties of the office of coroner are in all critical aspects the same in 1988 as they were in 1918 when the Peoria Cordage Co. case, supra, was decided. Section 6 of Chapter 31 of the Illinois Revised Statutes quoted hereinabove, was last amended on February 6, 1874. S.H.A. Ch. 31, Â§6. Section 10 of Chapter 31, hereinabove quoted, in part, has been amended by the legislature from time to time, but a review of the amendments establishes that the primary intent of the amendatory legislation has been to expand, rather than to limit, the duties of the office of coroner.

The only reduction or limitation of the authority of the office of coroner which this court has been able to discover came with the adoption of the 1870 Illinois Constitution. At common law, the office of coroner had judicial powers. Section 1 of Article VI of the constitution of Illinois of 1870 vested all judicial powers in the courts, leaving no residuum of judicial power to be exercised by the coroner. Peoria Cordage Co. vs. Industrial Board 284 Ill. 90 at 96 119 N.E. 966 (1918); Palenzke vs. Bruning, 98

Ill. App. 644, at 649 (1900).

The brief submitted by the Illinois Sheriff's Association cited Atty. Gen. Op. No. S-1279 (July 26, 1977) as authority for the proposition that the coroner does not have the right to control the general police investigation of the scene of the crime or to interfere with or control the police investigation of the crime. The issue involved here is not the right of the coroner to control the general police investigation but rather the authority of the police to control or interfere with the coroner's investigation. The Attorney -General's opinion states that the object of Section 10.5 of Chapter 31 of the Illinois Revised Statutes is to protect and preserve the dead body and the scene of the death. The Attorney General then concluded;

"Section 10.5 grants the coroner the discretionary authority to take into his custody and control that property necessary for the proper resolution of the coroner's investigation.

If the police at the scene of the investigation are interfering with the dead body in a way that is prohibited by SIO.5, then the coroner has the authority to stop them or, if the police are proceeding in such a way as to indicate that evidence may be destroyed so that the coroner may have difficulty in rendering an opinion as to the cause of death, then the coroner has the authority to stop the incorrect methods of handling the evidence and instruct the officers on how to proceed correctly." Atty. Gen. Op. No. S-1279 (July 26, 1977).

The court concludes that the Constitution of Illinois of 1970 clothes Illinois coroners with all of the common law power and authority which coroners since ancient times have possessed, as well as all of the authority and power granted to the office of coroner by the statutes of the State of Illinois, most of which have remained unchanged since the adoption of the constitution of 1870.

The statutes vesting law enforcement and crime suppression powers to the Illinois State Police, to Sheriffs and to municipal police departments are general in nature giving them broad general law enforcement authority over all types of offenses. S.R.A. Ch. 38, 52-13. The statutes vesting law enforcement and crime suppression powers in coroners are specific in nature giving them power to investigate only death cases where the decedent was not under the care of a physician.

To the extent that a general statute and a special statute must be construed to be repugnant to one another, the special statute or the statute dealing with the common subject matter in a minute way will prevail over the general statute. People ex rel.

Kempiners vs. Draper, 113 Ill. 2d 312, 497 N.E. 2d 1166 (1986) ; Routt vs. Barrett, 396 Ill. 311, 71 N.E. 2d 660 (1947) ; People vs. Bailey, 116 Ill. App. 3d 259, 452 N.E. 2d 28 (1983).

It is the opinion of this court that the general police powers of the Illinois State Police, the Sheriffs and the municipal police departments are not repugnant to or inconsistent with the specific power of coroners to investigate deaths, but if such a repugnancy or inconsistency were to arise, the specific grant of authority to coroners to investigate deaths would necessarily prevail over the general law enforcement powers of the other police agencies.

Since the statutory authority of general police agencies does not appear to be in conflict with the specific authority granted to coroners to investigate deaths, there should be no conflict in how the general police agencies and the coroner's office go about the investigation of homicidal deaths. It is the expectation of the general public and the public policy of the State of Illinois that homicidal deaths be identified as such and that the person or persons responsible for such deaths be identified, apprehended and brought to justice expeditiously. It is a matter of high priority that the coroner and general police agencies cooperate effectively with each other, rather than compete with each other, or obstruct one another in the performance of their duties.

Under Illinois law, the coroner has exclusive jurisdiction over the body of the decedent, all of the parts thereof, and any substances therefrom, as well as over any personal property within the direct possession of the decedent at the time of death. Neither a general police authority nor any other person may lawfully remove a body from the location where it was found unless it is uncertain whether the body is, in fact, dead, or it shall become necessary to protect such body from damage or destruction, or unless necessary to protect life, safety or health. S.H.A. Ch. 31, Â§10.5. The statutory obligation of every law enforcement official is to notify the coroner promptly. S.H.A. Ch. 31, 510.6. With respect to such duties, the authority and power of the office of coroner are exclusive, and other general law

enforcement officers may not exercise such powers nor prevent the coroner from exercising the authority of his office.

However, the powers of the office of coroner are not limited to the exclusive authority described hereinabove because textarea of the Coroner's Act provides that each coroner is a conservator of the peace in his county and shall have the same powers as the sheriff. S.H.A. Ch. 31, S6. When a coroner undertakes to exercise his authority granted by Â§6, he must bear in mind that such authority is not exclusive of other law enforcement officers. He shares the authority granted to him under Â§6 with the sheriff of his county, with the Illinois State Police, and if the alleged offense being investigated is within the corporate limits of a municipality, with the local municipal police department. In the exercise of his Â§6 authority, the coroner's authority is no different than and no less or greater than that of the sheriff and his deputies, the Illinois State Police, or a sworn municipal police officer. Included within the non-exclusive law enforcement authority of the coroner, which he shares with all other general law enforcement agencies, are the collection and preservation of evidence of the crime; the identification, collection, and preservation of any instruments or fruits of the crime; and the identification and apprehension of the person or persons who committed the offense. The coroner has the authority to engage in such general law enforcement activities, but his authority in this area is not exclusive; it is shared with all other general law enforcement officials.

Section 1 of Art. II of the Constitution of Illinois of 1970 provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.³ The coroner, the sheriff, the Illinois State Police, and municipal police departments are all a part of the executive branch of the government. The manner by which such police agencies exercise their concurrent authority is probably beyond the authority of the judicial branch to determine in a declaratory judgment action. ILL. CONST. Art. III, Â§1.

Parenthetically, many judges who have heard significant numbers of criminal cases have observed what appears to be a general understanding as to the division of police work in the State of Illinois. The Illinois State Police have been observed to be most heavily involved in the enforcement of traffic laws on state highways outside of the corporate limits of municipalities, with the enforcement of controlled substances laws, and with the recovery of stolen motor vehicles. County sheriffs have been observed to be most heavily involved with general law enforcement duties in the unincorporated areas of their counties and within municipalities having no municipal police department. Municipal police departments have been observed to be most heavily involved with general law enforcement and ordinance enforcement within the corporate limits of their own municipalities. It would appear desirable for the coroner to meet periodically with other law enforcement officials to discuss which law enforcement agencies are best equipped to carry out general law enforcement functions which fall within their concurrent authority, but this is beyond the authority of the court to declare or direct.

Applying these legal principles to the instant case, it is apparent that the discovery of the deceased body of Mr. Biddell in his burning residence falls within the exception of Â§10.5 of Ch. 31 of the Illinois Revised Statutes. The Bloomington Rescue Squad was justified in removing the body from the burning residence to Brokaw Hospital to protect the body from damage and destruction and to preserve it for toxicological and pathological examination to determine the nature and cause of death.

When the coroner took possession of Mr. Biddell's body, he observed that the body bore puncture wounds and other marks and abrasions, and he learned from Deputy Coroner Book that the body had been removed from a burning building. Several causes of death were suggested under such circumstances: Asphyxiation by noxious fumes, the bi-products of the fire; asphyxiation by strangulation.; gunshot wounds or stab wounds. The presence of significant amounts of blood or other bodily fluids at the scene, or the absence thereof,

might be of assistance to the coroner in determining the nature and cause of death. The court, therefore, concludes that the coroner had the right to enter the residence at 1101 North Clinton Boulevard in Bloomington as a part of his exclusive jurisdiction over the body of the decedent and the substances therefrom.

The court therefore declares that it was unlawful for Lt. Wayne Emmett of the Police Department of the City of Bloomington to arrest or attempt to arrest the plaintiff in the exercise of his exclusive authority as coroner of McLean County to examine the alleged scene of death to determine whether there were present there, bodily substances of the decedent which might constitute evidence as to the nature and cause of the decedent's death.

The court further declares that it is unlawful for any general law enforcement officer to obstruct a coroner from performing any act within the exclusive authority of the office of coroner.

ENTERED this...16th day of June, AD., 1988.

Judge William Caisley