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Administrative Law—Reasonableness of Autopsy: Jury Question Where Circumstances Are Consistent with Accidental Death

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ship in any state pension or retirement system became a contractual relationship, the benefits of which could not be diminished or impaired, precluded the defendant retirement system from computing annuities to which members were entitled by a table which would reduce the amount of their annuities to sums below those which they would have been paid if the table in use when they joined the system were used. Retirement annuities to which teachers would be entitled were to be computed on the basis of the actuarial values, including tables of mortality, in effect upon their entry into service. The question not discussed in the *Birnbaum* case and to which the present case addresses itself is whether, in the event the mortality tables were revised between the date a member entered service and July 1, 1940, the constitutional amendment should be given retroactive effect and nullify as to such member the changes which had been made.

The Court unanimously held that the constitutional amendment was not to be retroactively applied, and that the retirement annuities to which teachers who had commenced their service prior to 1940 would be entitled were to be computed on the basis of actuarial values, including tables of mortality, in effect immediately prior to the effective date of the constitutional amendment vesting a member's rights.

It is to be observed that the effective date of the constitutional amendment was postponed for 1½ years

presumably to enable the State and its civil divisions to review their pension systems and to adjust, amend, modify or supplement the provisions of existing systems in the light of the fact that after such effective date such systems were no longer gratuitous, but by virtue of the new amendment became contracts and the members of pension systems thereby acquired vested interests which would not thereafter be diminished or impaired.⁹⁹

With this fact in mind, it is clear that the amendment was intended to have only prospective and not retroactive effect.

Bd.

REASONABLENESS OF AUTOPSY: JURY QUESTION WHERE CIRCUMSTANCES ARE CONSISTENT WITH ACCIDENTAL DEATH

*Brown v. Broome County*¹ was an action by a widow for damages resulting from an alleged unauthorized autopsy performed under direction of the coroner upon the body of her husband.² Deceased, a railroad employee whose

99. Day v. Mruk, 307 N.Y. 349, 354, 121 N.E.2d 362, 363 (1954).

1. 18 N.Y.2d 330, 207 N.Y.S.2d 657 (1960).

2. Performing an autopsy without authorization gives rise to a cause of action in favor of the nearest kin of the deceased for interference with their right to possession of the body for burial. *Darcy v. Presbyterian Hospital*, 202 N.Y. 259, 95 N.E. 695 (1911). The measure of damages may be an expression of the jury's "indignation at the defendant's wrong." *Gostkowski v. Roman Catholic Church*, 262 N.Y. 320, 325, 186 N.E. 798, 800 (1933); *Grawunder v. Beth Israel Hospital Ass'n.*, 242 App. Div. 56, 272 N.Y. Supp. 171 (2d Dep't 1934).

duties involved assisting in assembling and coupling freight cars, was found lying dead between the tracks in the railroad yard with his left hand partially severed. The coroner ordered an autopsy despite plaintiff's objections.

It is the duty of the coroner to "make inquiry into unnatural deaths occurring within the county as prescribed by law."³ Whenever a person has died suddenly "under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means" or that the person has committed suicide, the coroner must inquire into the cause of death.⁴ Whenever the coroner is authorized to make such an inquiry, he has the right to conduct an autopsy.⁵

At the trial, the jury returned a verdict for plaintiff in the sum of \$3,500 which was set aside by the trial judge who ruled as a matter of law that the coroner was justified in suspecting violence.⁶ The Appellate Division reversed and reinstated the verdict, ruling that on the record the reasonableness of the coroner's conduct was properly a question of fact.⁷ The rational basis of suspicion that a crime has been committed is the test; not merely "violence," which often is an element of an accidental death.

The Court of Appeals affirmed, holding that the question was properly one for the jury. While in most cases the court can readily determine as a matter of law whether the coroner had reasonable ground to suspect death by criminal means or suicide, when the circumstances disclose conditions which often accompany accidental death, there must be substantial reasons present to justify the need for an autopsy. Where the reasonableness of the coroner's conduct may be open to doubt, the question must be submitted to the jury.

Bd.

POLICE COMMISSIONER'S POWER TO IMPOSE DISCIPLINARY SUSPENSION WITHOUT SALARY NOT LIMITED BY CODE

The New York City Administrative Code confers discretionary authority upon an agency head to suspend a subordinate for a period not exceeding one month pending the hearing and determination of charges against him.⁸ If the subordinate is not subsequently removed, he is entitled to recover full salary for the period of suspension, less any fine which may be imposed.⁹ The salary of an office holder is incidental to his office and he is entitled to his entire salary as long as he possesses the title to the office.¹⁰ Thus, suspension from the performance of the duties of the office does not itself, without subsequent

3. N.Y. County Law § 662.

4. N.Y. Code Crim. Proc. § 773.

5. N.Y. Public Health Law § 4210.

6. 20 Misc. 2d 908, 189 N.Y.S.2d 704 (County Ct. 1959).

7. 10 A.D.2d 152, 197 N.Y.S.2d 679 (3d Dep't 1960).

8. New York City Admin. Code § 884-1.0.

9. *Ibid.*

10. *People ex. rel. Ryan v. French*, 91 N.Y. 265 (1883).