

Burial of Soldiers and Sailors—Expense of Burial of Old Soldiers and Sailors.

Under Section 2065 of the Revised Codes of 1907 as amended by Chap. 109 of the Laws of the 12th Legislative Assembly in order that any county may be charged with the burial of any soldier, a sailor or marine, the said soldier, sailor or marine must have died and been buried in such county under the direction of some person designated by the County Commissioners.

Nov. 30th, 1917.

Mr. E. C. Kurtz,
County Attorney,
Hamilton, Montana.

Dear Sir:

I have your letter of recent date in which you say:

"About three months ago a soldier of the Civil War, residing in this county, left for a visit in the state of Indiana. After he had arrived there he became ill and died. He was buried in the state of Indiana.

"A claim for his burial expenses has been presented to the Commissioners of this county and payment has been asked under the provisions of the Laws of 1911, page 196."

You desire to know whether this is a proper charge against Ravalli County.

Section 2065 of the Revised Codes of 1907, as amended by Chapter 109 of the laws of the 12th Legislative Assembly, provides:

"That it shall be the duty of the Board of County Commissioners of each county in the State, to designate some proper

person in the County, whose duty it shall be to cause to be decently interred, the body of any honorably discharged soldier, sailor or marine, who shall have served in the Army or Navy of the United States; who may hereafter die. Such burial shall not be made in any burial grounds or cemetery, or in any portion of such burial grounds or cemetery used exclusively for the burial of pauper dead. Provided, the expense of each burial shall not exceed the sum of one hundred dollars"

Section 2066 provides that the expense of burial shall be paid by the *county in which such soldier, sailor, or marine dies*, but if such deceased person has a residence in another county in the State than the one paying the expenses, the county of his residence shall *refund the money advanced by the county*, where he died.

Section 2067 as amended by Chapter 109 *supra* provides:

"It shall be the duty of the person appointed as provided in Sec. 1 of the Act, *to cause such deceased person to be buried* as provided in this Act, and he shall immediately report his action to the Clerk of the Board of County Commissioners, setting forth all the facts, together with the name, rank, or command, so far as is known, to which the deceased belonged, as such soldier, sailor, or marine. The date of death, place of burial, and his occupation while living, and also an *itemized statement of the expenses incurred by reason of such burial.*"

It will be noted that no provision is made for the burial of deceased soldiers, sailors, or marines who die outside or the state, and from a careful reading of these statutes it was apparently the intention of the legislature to provide burial only for those persons who die within the State.

The duty of burial is imposed upon the person designated by the county commissioners, such person must first determine that the deceased is an honorably discharged soldier, sailor, or marine, who had served in the Army or Navy of the United States, and no expense can arise against the county for such a burial without these questions having been determined.

The statute makes it the duty of the person designated by the County Commissioners to act. The duty is imposed upon him alone. No officer or person is authorized to make contracts, incur debts, or expend money in the burial of deceased soldiers, sailors, or marines. *Sherfey vs. Kidd Co.* 58 N E. 186, *State ex rel. Hogan vs. Fogan*, 40 Pac. 314.

Such person must immediately report to the Commissioners, giving the information required by the statute, together with an itemized statement of the expenses incurred. It is upon such report that the County Commissioners are empowered to pay such expense out of the public funds.

I take it from your letter that the expenses were not incurred by the person designated by the board of County Commissioners of your county.

Had the legislature intended that the expenses incurred in the burial of a person dying outside the state should be paid, it would

have been a simple matter to have made such provision, just as it did where a person dies in a county other than the county of his residence.

It is manifest from the character of this legislature that the legislature was moved by the patriotic purpose of recognizing, on behalf of the State, that that class of citizens who had borne the hardships and perils of the public defense are entitled to a decent and respectable burial, without oppression to their families or friends, and without having cast upon them the implication of being pauper, but for some reason no provision was made for the burial of those dying outside of the State.

I am therefore of the opinion that this is not a proper charge against Ravalli County.

Respectfully,

S. C. FORD,

Attorney General.