

**Deceased Soldiers — Burial — County Commissioners—
Soldiers and Sailors—Veterans.**

Expenses for the burial of a deceased soldier, sailor, marine or army nurse must be borne by the county and it is the duty of the Boards of County Commissioners to appoint some person to supervise such burials

O. C. Lamport, Esq.,
State Adjutant, American Legion of America,
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My dear Mr. Lamport:

You have requested my opinion relative to the burial of deceased soldiers, sailors, marines and army nurses in this state, under Section 4536, Revised Codes of Montana of 1921, and have asked in particular whether under that law it is the duty of the Boards of County Commissioners to appoint some person to supervise such burials, and if so, for what term.

I understand this request arises from the custom of certain Boards of County Commissioners to appoint a different person for each burial, or to make appointments for one burial only, and where a burial becomes necessary and no such appointment is made, to decline to pay the expense thereof on the ground that it was not under the supervision of a person appointed for that purpose by the Board of County Commissioners.

Section 4536, above, reads in part as follows:

“It shall be the duty of the Board of County Commissioners of each county in this state to designate some proper person in the county, preferably an honorably discharged soldier, sailor, or marine, whose duty it shall be to cause to be decently interred the body of any honorably discharged soldier, sailor, marine or nurse who shall have served in the army, navy, marine corps, or army nurse corps of the United States, who may hereafter die; * * *”

It is clear from the language of this section that the Legislature intended that such appointment should be mandatory upon the Boards of County Commissioners. While the law does not specify the term of such appointment I think it is equally clear that the Legislature intended one appointment to care for all burials and not a separate appointment for each of such burials. Therefore, it is my opinion that such appointment should be made for a definite term, whether one year or two years, one month or six months, and at the expiration of such term a new appointment must be made, to the end that there will always be a properly designated person to supervise the burials contemplated by the Act, and such appointee must be preferably an honorably discharged soldier, sailor or marine.

In an opinion by this office, rendered to you under date of March 22, 1922, it was said:

“It is my opinion that where a burial has been had of one entitled to the benefit of this Act, the mere fact that the County Commissioners failed to appoint some one to take charge of the burial, or the fact that the claim was not presented in advance, should not prevent the allowance of the claim by the county, and that the same should be allowed by the County Commissioners.”

I wish to reaffirm the above opinion, and to add thereto that it is also my opinion that the Board of County Commissioners cannot defeat the operation of this law and avoid liability for the expense of the burials contemplated thereby, by merely refusing or neglecting to make the appointment required by the Act.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.