

Deceased Soldiers—Burial—Expenses—Counties—County Commissioners—Claims.

Section 4536 R.C.M. 1921, and related sections, are applicable to all honorably discharged soldiers, sailors, marines and nurses, regardless of whether such persons died with or without sufficient means to defray funeral expenses.

Where a person has been appointed to cause the burials to be made only such expenses as are incurred by said person in the discharge of his duties are a charge against the county. The expense must not exceed \$150, and the county commis-

sioners must allow the expenses where they do not exceed that amount.

A family may not make a contract with an undertaker to perform burial services and thus create a charge against the county for \$150. Method of handling the payment of these expenses stated in opinion.

Elmer Sorensen, Esq.,
Sidney, Montana.

August 1, 1929.

My dear Mr. Sorensen:

You have requested an opinion as to whether the law relating to the burial of deceased soldiers permits the burial of soldiers who have died and left estates.

This office has held since 1922 that the law was applicable to all honorably discharged soldiers, sailors, marines and nurses, regardless of whether such persons died with or without sufficient means to defray funeral expenses. (Opinions of Attorney General, Vol. 9, page 248).

You further inquire if after a funeral the family may have the undertaker present a claim for \$150 and have it allowed by the county. Section 4536 R.C.M. 1921 provides that the person appointed by the board of county commissioners shall cause to be decently interred the body of any of the persons mentioned therein and that the expense of such burial shall not exceed the sum of \$150 to be paid by the county commissioners of the county in which the deceased resided at the time of his death.

Section 4538 requires the person appointed to make an immediate report of any burials made by him to the clerk of the board of county commissioners, setting forth all of the facts, together with the name, rank or command, so far as is known, to which the deceased belonged, 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.

Section 4539 requires the clerk of the board of county commissioners to transcribe and keep in a book all the facts contained in such report and to make application to the government of the United States for a suitable headstone and to cause the same to be placed at the head of the grave of said soldier, sailor or marine. Section 4537 provides that the expenses of the funeral shall be audited and paid as other expenses are audited and paid by the county.

It is apparent from the foregoing provisions that the board must appoint a person to perform these duties and that when such person is appointed the expenses of the burial must have been incurred through such person as a condition precedent to the payment of the expenses by the county. It is upon the itemized statement of the expenses incurred by the person appointed and rendered by him to the clerk of the board

of county commissioners that the board acts when ordering warrants drawn in payment of the expenses therein set forth. The expenses which are shown in the report are those "incurred by reason of such burial" which means the burial which the person appointed by the board under the authority of the statute caused to be made. Expenses contracted by any other person could not be included in that report. Therefore, it is my opinion that a family cannot make a contract with an undertaker to perform burial services and then have the undertaker present a claim to the county for \$150 and have it allowed by the board. This would not be an expense incurred by the person appointed by the board to cause such burials to be made and would not arise by virtue of the discharge of his duties. The county may not recognize any expense incurred in this connection except those incurred by the person appointed by them.

You further inquire if in settling a claim the county commissioners can disallow part of the same. If the expense has been incurred by the person appointed by the board and that expense amounts to a sum not to exceed \$150, the board must allow the same.

It is my opinion that the proper method of handling the payment of these expenses is for the parties with whom the person appointed by the board of county commissioners has contracted to perform services and who have performed them, to present their bills to the person appointed by the board who should then make up a statement of all expenses so incurred, itemizing the expenses and showing the names of the persons with whom he contracted to perform these services, the services rendered by each, the contract price, and attach the bills to the statement and forward it to the clerk of the board of county commissioners who will present it to the board which should audit the same and direct warrants to be issued to the persons shown on the statement to be entitled thereto. The statement should be verified by the oath of the person appointed by the board that he caused the burial to be made, that he incurred the expenses in connection therewith shown on the statement, and that the amounts shown therein are due to the persons shown to be respectively entitled thereto.

Very truly yours,

L. A. FOOT,
Attorney General.