

Opinion No. 16.
Burial—Duty of Relatives—Old Age Pensioners.

HELD: Duty of burial of old age pensioners devolves upon relatives—not county—if relatives have sufficient means to defray expenses.

January 16, 1937.

Mr. William R. Taylor
County Attorney
Anaconda, Montana

Dear Mr. Taylor:

You have requested an opinion from this office as to whose duty it is to bury and defray the cost of burial of old age pension recipients, who have died in your county, and who have families and relations residing in the county.

Section 11034 R. C. M., 1935, provides:

“The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

“1. If the deceased was a married man or woman, the duty devolves upon the husband, or wife.

“2. If the deceased was not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age and within this state, if possessed of sufficient means to defray the necessary expenses.

“3. If the deceased left no husband or kindred answering the fore-

going description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if there is none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

"4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified, and if all omit to act it devolves upon the tenant, or if there is no tenant, then the owner of the premises or master, or if there is no master, upon the owner of the vessel in which the death occurs or the body is found."

This section is somewhat ambiguous in that it not only provides upon whom shall fall the obligation of defraying the cost of burial but it also provides the obligation of the actual burying. For instance, subdivision 3 of this section places the duty of burial upon the coroner conducting an inquest upon the body of the deceased, and subdivision 4 of this Act places the duty upon certain other persons such as the tenant, or, if there is no tenant, then upon the owner of the premises so-called. Clearly this section does not mean that if the coroner who conducts the inquest, or the tenant upon whose property the person died, buries these persons, that they will be compelled to pay the cost, but subdivisions 3 and 4 simply make it the duty of the coroner, or tenant, as the case may be, to perform the act of burial, and imposes no legal obligation upon them to pay the cost. However, subdivision 2 of this section does provide that certain persons, if possessed of sufficient means, must defray the necessary expenses. This subdivision provides that if the deceased was not a married woman, and by the use of said language it incorporates subdivision 1 of this section in its language, and the two subdivisions read together require that if the deceased was a married man or woman, the duty of burial devolves upon the husband or wife, and subdivision 2 provides that if the deceased was not a married woman but left kindred, the duty of burial devolves upon them, and these two subdivisions being read together re-

quire that these particular relatives or kindred not only bury the deceased but shall defray the expenses, if they have sufficient means to do so.

It is therefore my opinion that the county is not compelled to defray the cost of burial expenses of deceased old age pension recipients where they have relatives in the relationship as defined in the foregoing section and subdivision thereof, who have sufficient means to defray the cost of burial.