

No. 275

**BOARDS OF COUNTY COMMISSIONERS—VETERANS'
BURIAL SUPERVISOR—CLERK OF BOARD OF
COUNTY COMMISSIONERS—FUNERAL EXPENSES—
COUNTY OF RESIDENCE—BURIAL EXPENSE**

Held: Under Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 52, Laws of 1939, and following sections, it is mandatory on Board of County Commissioners of County of bona fide residence of deceased honorably discharged soldier, sailor, marine or nurse who served in U. S. Army, Navy, Marine Corps, or Army Reserve Corps to pay the sum of \$150.00 expense of burial, except where benefit is waived by executor, administrator or heirs.

October 20, 1941.

Mr. John D. French
County Attorney
Lake County
Polson, Montana

Dear Mr. French:

You have submitted the following question:

"I find it necessary to request your opinion upon the question of whether or not the County must pay \$150.00 (unless waived) when a veteran dies, even though part of the funeral expenses are paid from some other source."

In order to answer your inquiry it is necessary to examine Sections 4536 to 4641, Revised Codes of Montana, 1935, both inclusive. It will be observed these sections originally came into being as Chapter 39, Laws of 1903. Section 4536, Revised Codes of Montana, 1935, (then known as Section 2065, Revised Codes of Montana, 1907), has been amended by Chapter 89, Laws of 1909; Chapter 109, Laws of 1911; Chapter 178, Laws of 1919; Chapter 194, Laws of 1921; Chapter 181, Laws of 1931; Chapter 163, Laws of 1937; and Chapter 52, Laws of 1939.

Section 4536, as amended by Chapter 52, Laws of 1939, is as follows:

"It shall be the duty of the board of commissioners of each county in this State to designate some proper person in the county, who shall be known as veterans' burial supervisor, 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. Such burial shall not be made in any burial grounds or cemetery, or in any portion of any burial grounds or cemetery, used exclusively for the burial of pauper dead; provided, (1) the expense of burial shall be the sum of one hundred fifty dollars (\$150.00), to be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death, and provided (2) that the benefits hereof shall not be available in the case of any decedent whose executor, administrator or heirs waive the benefits hereof.

"In the event any honorably discharged soldier, sailor, marine or nurse, who shall have served in the army or navy of the United States, and who is a resident of the State of Montana, shall die while temporarily absent from the state or county of his residence, then the provisions of this act shall apply, and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided, and the veterans' burial supervisor may take charge of said burial in the same manner as he would, had such deceased person died within the county of his residence."

"Whenever any soldier, sailor, marine, nurse or inmate hereinbefore described shall die at any public institution of the State of Montana, other than the state soldiers' home, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state institution, as aforesaid, shall provide the proper burial herein prescribed except that the expense of each burial shall not exceed the sum herein allowed, which expense shall be paid by the county in which the decedent resided at the time of entry into such institution, but no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment."

By studying the above mentioned sections and the many amendments of Section 4536, Revised Codes of Montana, 1935, it is apparent the legislature was constantly striving to perfect the law to express its full intentions in connection with the burial of the honorably discharged soldier, sailor, marine or nurse who had served his country as such, and who thereafter died.

It will be noted the original act provided the county would pay not to exceed \$50.00 toward the expense of such burial and then only in event the veteran did not leave sufficient funds to defray the funeral expenses. The next amendment increased the amount to not to exceed the sum of \$100.00. (Chapter 89, Laws of 1909.)

Then in Chapter 109, Laws of 1911, the legislature declared the duty of the board of county commissioners to designate a proper person in the county whose duty should be to cause the decent interment of the deceased veteran.

In Chapter 178, Laws of 1919, the amendment provided for the same payment by the county as heretofore set out, but also in event the veteran should die while temporarily absent from the state.

In Chapter 194, Laws of 1921, the amendment provided the expense of each burial should not exceed the sum of \$150.00, and removed any restrictions in the payment thereof, regardless of the amount of the estate of the deceased.

In Chapter 181, Laws of 1931, minor changes were made.

In Chapter 163, Laws of 1937, the provision was inserted that no benefits would be paid in the event the decedent's estate, as determined by the inventory and appraisal, exceeded \$2,000.00 or in case the executor, administrator or heirs would waive the benefits of the payment.

In Chapter 52, Laws of 1939, the legislature again wiped out the requirement relative to the amount of the estate of a deceased soldier, sailor, marine or nurse who had been honorably discharged from the army, navy, marine corps or army nurse corps of the United States, and stated unequivocally that:

- (1) The expense of burial shall be the sum of \$150.00 to be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death and there is but one exception to this mandate which is
- (2) That the benefits hereof shall not be available in the case of any decedent whose executor, administrator or heirs waive the benefit hereof.

The 1939 act also provides that, when any honorably discharged soldier, sailor, marine or nurse, who shall have served in the Army or Navy of the United States, and who is a resident of the State of Montana, shall die while temporarily absent from the state or county of his residence, the provisions of the act shall apply, and the burial expenses not exceeding the amount therein specified shall be paid in the same manner as above provided. The act in its language is mandatory:

"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, who shall be known as veterans' burial supervisor . . . 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." (Emphasis mine.)

It further provides such burial shall not be made in any part of any cemetery or burial ground used for the burial of pauper dead.

Section 4538, Revised Codes of Montana, 1935, defines the duty of the veterans' burial supervisor, and Section 4539, Revised Codes of Montana, 1935, defines the duty of the clerk of the board of county commissioners.

It is my opinion Chapter 52, Laws of 1939, together with Sections 4537, 4538, 4539, and 4540, Revised Codes of Montana, 1935, shows plainly the intent of the legislature was to provide a mandatory procedure in the burial of the veterans defined therein, so that each qualified veteran would receive a decent and proper interment, the whole intent of the legislature being that the sum of \$150.00 would be expended by the board of county commissioners for the funeral and burial of each such veteran so that

each would be assured by a grateful people of a burial in keeping with the station the veteran had occupied while serving his country, excepting **only** where the administrator, executor or heirs of said deceased waive the benefits.

This construction is made more apparent by the provision in Chapter 52, Laws of 1939, at page 96, that "no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment."

In many instances it may be necessary upon the death of such veteran that other funds be used in the emergency and at the time—but this would not excuse the board of county commissioners from paying the costs of burial and funeral up to the amount of \$150.00, as by the statute required.

Since the legislature has imposed this duty on the board of county commissioners, the commissioners have no alternative but to see that their duty is performed in accordance with the law.

It is therefore my opinion:

- (1) It is mandatory upon the board of county commissioners to pay the sum of \$150.00 toward the burial expenses of those veterans mentioned, when a claim therefor has been presented, regardless of whether part or all of such expenses have been paid by someone else;
- (2) The statute of limitations does not run against such claim.

Sincerely yours,

JOHN W. BONNER
Attorney General