

No. 283

**CLERK OF BOARD OF COUNTY COMMISSIONERS—
VETERANS—COUNTIES—BURIAL OF VETERANS—
ARMY—NAVY—MARINE CORPS—ARMY NURSE CORPS**

Held: Duty of clerk of board of county commissioners on own initiative to make application for headstone and to see that it is properly placed, that cartage and placement shall not exceed \$10.00, such charge to be audited and paid same as other county expenses. Section 4539, Revised Codes of Montana, 1935, is a separate and independent act from Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 52, Laws of 1939, and is a different charge against the county.

October 23, 1941.

Mr. Edison W. Kent
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Kent:

You have submitted the following question:

“Who is responsible for the cost of cartage and erecting of a headstone for the grave of a deceased soldier?”

In answering your inquiry it is well to note Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 52, Laws of 1939, provides it is the duty of the board of county commissioners to designate a 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. The expense of such burial shall be the sum of \$150.00. (See Attorney General's Official Opinion No. 275, Volume 19.)

Section 4539, Revised Codes of Montana, 1935, provides as follows:

“It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses provided for in this act, to transcribe, in a book to be kept for that purpose, all the facts contained in such report concerning such soldier, sailor, or marine. It shall also be the duty of said clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United States for a suitable headstone, as provided by act of congress, and to cause the same to be placed at the head of the grave of such soldier, sailor, or marine, the expense of which shall not exceed the sum of ten dollars for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in section 4537 of this code for the burial expenses.” (Emphasis mine.)

It is to be noted the emphasized portion of Section 4539, Revised Codes of Montana, 1935, is mandatory in declaring it is the duty of the clerk of the board of county commissioners to make application to the proper authorities under the government of the United States for a suitable headstone, as provided by the Act of Congress, and to cause the same to be placed at the head of the grave of such veteran, the expense of which shall not exceed the sum of ten (\$10.00) dollars for cartage of and properly setting up each stone.

The language of this section is plain and unambiguous. It directs the clerk to apply for the headstone and cause it to be placed. The expense of cartage and properly placing the same shall not exceed \$10.00.

The law requires the clerk to perform such duty without any request from anyone.

Section 4539, Revised Codes of Montana, 1935, further provides the expense thus incurred shall be audited and paid as provided in Section 4537, Revised Codes of Montana, 1935; that is, this expense of \$10.00 shall be audited and paid as other expenses are audited and paid by the county.

Section 4536, as amended by Chapter 52, Laws of 1939, and Section 4539, Revised Codes of Montana, 1935, are two separate and distinct acts. One may be repealed or amended without affecting the other in any particular.

Section 4536, Revised Codes of Montana, 1935, places a duty on the board of county commissioners. Section 4538, Revised Codes of Montana, 1935, places a duty on the clerk of the board of county commissioners. Both requirements are manifestations of a grateful people for their soldier dead.

It is therefore my opinion Section 4539, Revised Codes of Montana, 1935, is independent from Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 52, Laws of 1939, and the expenses of cartage and placing of a headstone is a charge against the county entirely separate from the burial expense. It is the duty of the clerk on his own initiative to make application for the headstone and see it is properly placed and the cartage and placing thereof shall not exceed the sum of ten (\$10.00) dollars. Such charge shall be audited and paid the same as other expenses are audited and paid by the county.

It is further my opinion the statute of limitations does not run against such a claim.

Sincerely yours,

JOHN W. BONNER
Attorney General