

No. 361

**PUBLIC WELFARE—ESTATES—FUNERAL EXPENSES,
what are—OLD AGE ASSISTANCE**

Held: All expenses necessary to provide a decent burial are included within the term "funeral expenses," as used in Section XI, Part III, Chapter 82, Laws of 1937.

February 18, 1942.

Mr. J. W. Lynch
County Attorney
Chouteau County
Fort Benton, Montana

Dear Mr. Lynch:

You have requested my opinion as to what items of expenses may be considered in the term "funeral expenses," as used in Section XI, Part III, Chapter 82, Laws of 1937.

This section authorizes the state and county to file a claim against the estate of a deceased recipient of Old Age Assistance. It provides such claim "shall be allowed . . . after funeral expenses not to exceed one hundred dollars have been paid . . ."

The rule established by the great weight of authority seems to be that reasonable and proper funeral expenses of a decedent should be allowed, even though the estate is insolvent. 24 Corpus Juris, page 92.

Within this rule, costs of tombstones, mourning apparel for widow and children, burial lots, press notices, minister fees, music for service, flowers, crypt, and transportation of body for burial have been held to be proper funeral expenses.

24 Corpus Juris 92, 93, 11 R. C. L., p. 222 to 227;
Sweeney v. Muldoon, 139 Mass. 304, 31 N. E. 720;
Seitz v. Engert, 56 Pac. (2nd) 1242, 13 Cal. App. (2nd) 302;
In re Allen's Estate, 59 Pac. (2nd) 360, 186 Wash. 612;
Adams v. Southern Pacific Co., 53 Pac. (2nd) 121, 4 Cal. (2nd) 731;
Home Undertaking Co. v. Joliff, 19 Pac. (2nd) 654, 172 Wash. 78.

I find no cases where our Supreme Court has passed directly on this question. However, it is well known in practice such items as the burial lot, opening the grave, minister's fees, etc., have been allowed by our Probate Courts as proper items to be allowed as funeral expenses.

It is therefore my opinion the term "funeral expenses," as used in Section XI, Part III, Chapter 82, Laws of 1937, includes all expenses necessarily incurred in providing a decent burial, such as undertaking charges, costs of interment, services of minister or clergy, etc.

Sincerely yours,

JOHN W. BONNER
Attorney General