

No. 368

SOLDIERS—SAILORS—MARINES—NURSES—FUNERAL EXPENSES—BURIAL OF PERSONS DYING IN ACTIVE OR TRAINING SERVICE

Held: Soldiers, sailors, marines, or nurses dying in active or training service do not come within provisions or benefits of Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 52, Laws of 1939. The Federal Government—through the army and navy department—has made provisions for such funeral and interment expenses.

March 3, 1942.

Mr. J. Miller Smith
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Smith:

You have submitted to my office for an opinion the following question:

“Do the benefits of Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 52, Laws of 1939, cover or include any soldier, sailor, marine or nurse while serving his enlistment or induction in the army, navy or marine corps of the United States and who died while in such service, and consequently before being honorably discharged therefrom?”

In answering your inquiry, it is well to examine the pertinent parts of Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 52, Laws of 1939, 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 . . . 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 . . .

“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 . . .” (Emphasis mine.)

It is apparent the benefits under this act apply only to an **honorably discharged** soldier, sailor, marine or nurse, and do not apply to any soldier, sailor, marine or nurse who may die while in the military services of the United States.

It is a well-known rule of law that, where an act specifically designates the class to be benefited, all others than those so designated are excluded from its benefits.

“Such a statute must be strictly construed and followed.”

Page v. New York Realty Co., 59 Mont. 305, 317, 196 Pac. 871.

The Federal Government has provided for funeral expenses and interment for the soldier, sailor, marine and nurse dying while in the military services.

I find that Chapter 237, Sections 2 and 3, 52 Statutes at Large, at pages 398 and 399, provides in part as follows:

“Sec. 2. Authorized funeral expenses shall include the expenses of and incident to the recovery of bodies, cremation (only upon the

request of relatives of the deceased), preparation for burial, transportation to the home of the deceased or to a national or other cemetery designated by proper authority, and interment." (Vol. 11, F. C. A. Title 10, paragraph 916b.)

"Sec. 3. Funeral expenses shall be allowed for (1) all persons in the Regular Army as composed under Section 2, Act of June 3, 1916, as amended, . . . who die while in the active military service; (2) accepted applicants for enlistment; . . ."

The composition of the Regular Army constituted under Section 2, Act of June 3, 1916, 39 Statutes at Large 166, as amended, provides as follows:

The Regular Army of the United States . . . shall consist of the Infantry, the Cavalry, the Field Artillery, the Coast Artillery Corps, the Air Corps, the Corps of Engineers, the Signal Corps, which shall be designated as the combatant arms or the line of the Army; the General Staff Corps; the Adjutant General's Department; the Inspector General's Department; the Judge Advocate General's Department; the Quartermaster Corps; the Finance Department; the Medical Department; the Ordnance Department; the Chemical Warfare Service; the officers of the Bureau of Insular Affairs; the officers and enlisted men under the jurisdiction of the National Guard Bureau; the chaplains; the professors and cadets of the United States Military Academy; the present military storekeeper; detached officers; detached enlisted men; unassigned recruits; the Indian scouts; the officers and enlisted men of the retired list; and such other officers and enlisted men as are now or may hereafter be provided for. (June 3, 1916, c. 134, Sec. 2, 81, 39 Stat. 166, 203; June 4, 1920, c. 227, sub-chapter I, Sec. 2, 41 Stat. 759; Feb. 28, 1925, c. 371, Sec. 3, 43 Stat. 1076; July 2, 1926, c. 721, Sec. 1, 44 Stat. 780; June 15, 1933, c. 87, Sec. 16, 48 Stat. 159.)

Under the Navy Department, the Federal Government has likewise provided for funeral expenses and interment of the personnel in the act of April 20, 1940, being Chapter 119, 54 Statutes at Large 119-145, as follows:

FUNERAL EXPENSES—"Funds to be expended under such regulations as the Secretary of the Navy may prescribe are hereby authorized to be appropriated as may be necessary from time to time for the funeral expenses of the deceased persons hereinafter specified. (Apr. 20, 1940, c. 119, Sec. 1, 54 Stat. 144.)

FUNERAL EXPENSES; EXPENSES INCLUDED—"The words 'funeral expenses' as used in this Act (Sections 924 to 929 of this title), and in subsequent Acts appropriating funds as herein authorized, shall be construed to include the expense of, and incident to, the recovery of bodies; cremation, but only on request of the relatives of the deceased; preparation for burial; transportation to the home of the deceased or to a national or other cemetery designated by proper authority; and interment. (Apr. 20, 1940, c. 119, Sec. 2, 54 Stat. 145.)

FUNERAL EXPENSES; PERSONS FOR WHOM AUTHORIZED—"Funeral expenses shall be allowed for—

- "(a) Officers and enlisted men of the Navy and Marine Corps, including those on the retired lists who die while on active duty;
- "(b) Members of the Nurse Corps (female) of the Navy, including those on the retired list who die while on active duty;
- "(c) Members of the Naval Reserve or Marine Corps Reserve who die while on active or training duty, or while performing authorized travel to or from such duty;
- "(d) Accepted applicants for enlistment;

“(e) Civilian employees of the Navy Department or the Naval Establishment who have been ordered away from their homes in the United States to duty outside the continental limits of the United States and who die while on such duty or while performing authorized travel to or from such duty; . . .” (Apr. 20, 1940, c. 119, Sec. 3, 54 Stat. 145.)

So it will be noted that, during the time a person is in the service of the Army of the United States, the Navy or Marine Corps on active or training duty, the Federal Government has provided funds to pay the expenses of the recovery of bodies, the cremation thereof if requested by the relatives of the deceased, preparation for burial, transportation to the home of the body of the deceased or to a national or other cemetery designated by proper authority; and interment.

It is apparent the Federal Government has provided all funds necessary to pay the funeral and interment expenses of each soldier, sailor, marine and nurse dying while in active service or active training in either of the services.

Therefore, it is my opinion soldiers, sailors, marines and nurses, who die in the active military service and consequently before being honorably discharged from such service, do not come within the provisions for burial benefits under Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 52, Laws of 1939, but are entitled to the funeral and interment benefits provided by the Federal Government administered through the Army and Navy Departments.

Sincerely yours,

JOHN W. BONNER
Attorney General