

No. 428

SOLDIERS AND SAILORS, expense of burial of—COUNTIES, burial of veterans by—COUNTY COMMISSIONERS, claims for veterans' burial—VETERANS' BURIAL SUPERVISOR

Held: Section 4536 of the Revised Codes of Montana of 1935, as amended by Chapter 52 of the Laws of 1939, requires the appointment of a veterans' burial supervisor by the board of county commissioners of each county of the state who shall see to the burial of any honorably discharged soldier, sailor, marine or army nurse and incur the expense of \$150.00 therefor.

If for any reason a veterans' burial supervisor fails, refuses or neglects to act or is unable to act, then any person may see to it the interment is made for the sum of \$150.00, which \$150.00 shall be a county charge.

The amount, in whatever manner spent for burial of the person entitled thereto, shall be \$150.00, since the statute specifically states "the expense of burial shall be the sum of one hundred fifty dollars (\$150.00)".

June 20, 1942.

Hon. W. A. Brown
State Examiner
State Capitol
Helena, Montana

Attention: Mr. S. L. Kleve, Chief Examiner

My Dear Mr. Brown:

You have asked this office whether a county is authorized to pay the \$150.00 burial expense of honorably discharged soldiers, sailors, marines and nurses, authorized by Section 4536 of the Revised Codes of Montana of 1935, as last amended by Chapter 52 of the Laws of 1939, to whoever may file a claim therefor or whether payment must be made to a regularly appointed burial supervisor. You have asked, also, whether the whole sum of \$150.00 must be paid regardless of the cost of burial.

At the outset it is important to emphasize the first part of the section to which reference is made. The commencement of the statute is:

"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 . . ."

No problem would arise, we assume, if in each county of the state there was an appointed and acting person rendering the service of veterans' burial supervisor. In all counties where such officer is appointed—and this should be in every county—payment should be made for burial in the manner described in Volume 13 of the Opinions of the Attorney General at page 145. It was there declared that, where a person has been appointed to cause the burials to be made, only such expenses as are incurred by such person in the discharge of his duties are a charge against the county. It appears the obligation for burial is not to be incurred first by the burial supervisor or by any other individual who shall be reimbursed by the county, but it seems the intent of the statute is the burial expense shall be paid directly by the county. In other words, the county's obligation is to see to the burial of the person's designated in the statute, and the payment is not intended as a death benefit payment to any surviving relative of the deceased.

However, no person should be deprived of the benefit of the statute because of the failure of the county commissioners to appoint a veterans'

burial supervisor or the failure of the veterans' burial supervisor to act. Accordingly it will follow that, in all cases where a veterans' burial supervisor fails, refuses or neglects to act, or for other reason does not act in connection with the burial of a veteran, any person may cause such veteran to be interred at the cost of \$150.00 and receive reimbursement for the same, if such amount was expended by such person claiming reimbursement. In this event, a showing of the eligibility of the interred person and the non-existence or non-action of the veterans' burial supervisor, as well as the incurring of the expense, should be required by the board of county commissioners.

There is no question the intent of the law is to provide for the decent interment of the bodies of those persons who honorably served their country in the armed forces or as army nurses; and the legislature has determined to accomplish this end the sum of \$150.00—no more and no less—shall be spent in each case. Therefore, whether the interment is accomplished by the veterans' burial supervisor or by some individual in lieu of such burial supervisor in the event of his failure, refusal, neglect or inability to act, the sum of \$150.00 shall be spent on the burial.

It is my opinion Section 4536 of the Revised Codes of Montana of 1935, as amended by Chapter 52 of the Laws of 1939, required the appointment of a veterans' burial supervisor by the board of commissioners of each county of the state who shall see to the burial of honorably discharged soldiers, sailors, marines or army nurses, residents of the county, and he shall incur the expense of \$150.00 to inter properly any such person, which sum shall be paid by the county. If for any reason a veterans' burial supervisor fails, refuses or neglects to act, or is unable to act, then any person may see to it the interment is made for the sum of \$150.00, which \$150.00 shall be a county charge. The amount, in whatever manner spent for the burial of the person entitled thereto, shall be \$150.00, since the statute specifically states "the expense of burial shall be the sum of one hundred fifty dollars (\$150.00) . . ."

It is further my opinion the provisions of Section 4536, Revised Codes of Montana of 1935, as amended by Chapter 52 of the Laws of 1939, requiring the commissioners to appoint a burial supervisor in each county, is mandatory—and such supervisor should be appointed in each county so that the purpose of the law may be carried out.

Very truly yours,

HOWARD M. GULLICKSON
Attorney General