

No. 433

**SOLDIERS' BURIAL EXPENSE—GENERAL FUND OF
COUNTY—BURIAL BENEFITS—COUNTIES—SOL-
DIERS—SAILORS—MARINES—NURSES**

Held: 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 dies after being honorably discharged is entitled to burial expense benefits provided in Chapter 52, Laws of 1939, and such burial expense—so provided in the sum of \$150.00—is payable as other county expenses out of the general fund of the county.

June 23, 1942.

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

Dear Mr. Smith:

You have submitted for my opinion the following questions:

Do the benefits granted under Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 52, Laws of 1939, cover and apply

to honorably discharged soldiers, sailors, marines or nurses who have served in the present war, who may die, after being so honorably discharged from the service of the United States?

Is the expense of burial in the sum of \$150.00 to be paid by the county, payable out of the "General Fund" of the county—or is it to be paid out of some special fund?

In answering your first question it is only necessary to refer to Section 1 of Chapter 52, Laws of 1939, which provides in part:

"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 . . . 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 . . ."

It will be observed Chapter 52, Laws of 1939, makes no distinction in regard to the funeral expense. The law is all inclusive, the only requirement being the person be an "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" and be an "actual bona fide resident at the time of death" of the county paying the amount.

Therefore, I agree with you that, under Chapter 52, Laws of 1939, any honorably discharged soldier, sailor, marine or nurse who has served in the army, navy, marine corps or army nurse corps of the United States who dies after being honorably discharged from the service comes within the provisions thereof.

See Attorney General's Report and Official Opinions, Volume 19, Opinion numbered 368.

Answering your second question, it will be noted Section 4537, Revised Codes of Montana, 1935, provides in part:

"Expenses of such funeral shall be audited, and paid as other expenses are audited and paid by the county."

Section 4465.11, Revised Codes of Montana, 1935, provides:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: At the regular meetings of the board to examine, settle and allow all accounts legally chargeable against the county except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same."

The general rule is stated in Corpus Juris:

A county warrant or order is payable out of the general fund of the county where the law makes no provision for a special fund. (15 C. J. 605.)

The Supreme Court of South Dakota had under consideration a similar question and held:

"The laws make provision for certain funds, but it has nowhere provided for a special fund for the payment of this claim. The warrant was therefore, in effect, drawn upon the general fund of the county . . . and the treasurer's refusal to pay the same, gave the plaintiff a right of action against the county."

Thomas Kane Co. v. Hughes County, 12 S. D. 433, 81 N. W. 894.

It is therefore apparent the expense of burial in the sum of \$150.00, provided for in Chapter 52, Laws of 1939, is payable as other county expenses out of the general fund of the county.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General