

Opinion No. 154.**Soldiers' Burial Expense—Burial Benefits—Counties.**

Held: A county which has paid the burial expense of an honorably discharged veteran as provided in Chapter 52, Laws of 1939, is entitled to be reimbursed by the county of which the deceased veteran was a bona-fide resident at the time of his death. A county is not liable for the burial expense under the provisions of Chapter 52, Laws of 1939, of an honorably discharged veteran who dies within the county but was not a bona-fide resident of the county or of the state of Montana.

December 7, 1943.

Mr. K. W. MacPherson
County Attorney
Powell County
Deer Lodge, Montana

Dear Mr. MacPherson:

You have requested my opinion concerning the following questions:

1. An honorably discharged veteran died and was buried in Powell County, and at the time of his death was a resident of Hill County. Powell

County paid the burial expense in the amount of \$150.00 and thereupon presented a claim to Hill County. Is Powell County entitled to reimbursement from Hill County?

2. An honorably discharged veteran was buried in Powell County and at the time of his death he was not a bona fide resident of Powell County or of the State of Montana although his father and brother were residents of Powell County. Should Powell County pay the claim for burial expenses?

In answering your first question, it is necessary to consider the provisions of Chapter 52, Laws of 1939, which provides that "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 actual bona fide resident at the time of death. . . ." It is apparent from this that Hill County is the county that should be charged with the burial expense under the facts presented. However, Powell County is the county that paid the claim and must look to Hill County for reimbursement. It would constitute unjust enrichment if Powell County were precluded from recovering from Hill County. This principle has been recognized in great weight of authority and where a statutory duty has been discharged and money paid out by another, recovery has been allowed on the theory of a contract implied in law. (Davis v. Seymour, 59 Conn. 531, 21 A. 1004, 13 L. R. A. 210; Maryland Casualty Co. v. H. A. Moss & Son, 276 Mich. 219, 267 N. W. 819.)

It would have been better practice for the claim to have been presented directly to Hill County as the deceased was a resident of Hill County, but Powell County having discharged the statutory duty should be entitled to reimbursement.

It is to be noted the second paragraph of Section 1, Chapter 52, Laws of 1939, provides for a situation where the veteran is absent from the county of his residence at the time of death, stating that the act applies, and in effect stating in such situation the veterans' burial supervisor of the county of death may take charge of the burial in the same manner as he would had such deceased person died within the county of his residence (which I under-

stand is the situation covered by your request for opinion). Further, in such situation "the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided," i. e., "by the county commissioners of the county in which deceased was a bona fide resident at time of death."

In answering your second question, it is necessary again to refer to Chapter 52, Laws of 1939, and observe that one of the requirements for eligibility to the payment of burial expense is that the deceased be an actual "bona fide resident at the time of death" of the county. Under the facts you presented the deceased veteran was not a resident of any county of Montana or of the State of Montana and the fact that he had relatives in Montana is immaterial. The fact that the deceased was not a resident of Montana precludes any valid claim being filed for burial expense in any county in Montana.

It is therefore my opinion:

1. A county which has paid the burial expense of an honorably discharged veteran as provided in Chapter 52, Laws of 1939, is entitled to be reimbursed by the county of which the deceased veteran was a bona fide resident at the time of his death.
2. A county is not liable for the burial expense under the provisions of Chapter 52, Laws of 1939, of an honorably discharged veteran who dies within the county but was not a bona fide resident of the county or of the State of Montana.

Sincerely yours,
R. V. BOTTOMLY
Attorney General