

Opinion No. 186.**Montana Soldiers' Home—Burial, Duty of Relatives of Deceased Women Inmates—Funeral Expenses.**

Held: The Montana Soldiers' Home is not compelled to defray the cost of burial expenses of deceased women inmates of the home where they have relatives as defined in Section 11034, Revised Codes of Montana, 1935, who have sufficient means to defray the necessary expenses. However, where there are no relatives, the expense of burial of deceased women inmates must be paid by the Montana Soldiers' Home.

March 7, 1944.

Mr. Harry E. Johnson
Chairman of the Board
Montana Soldiers' Home
Columbia Falls, Montana

Dear Mr. Johnson:

You have requested my opinion concerning the responsibility for the expense of burial of women inmates of the Montana Soldiers' Home.

In 1895 when the Montana Soldiers' Home was established there was no provision made for the expense of burial of inmates of the home who died while at the home.

Chapter 39, Laws of 1903, provided for the burial of deceased soldiers, sailors and marines who resided in Montana prior to their death. This act expressly excluded veterans who resided at the Montana Soldiers' Home.

Chapter 194, Laws of 1921, amended Section 2065, Revised Codes of Montana, 1935, the Veterans' Burial Act, and expressly provided that:

"Whenever any soldier, sailor, marine or nurse hereinbefore described shall die at the State Soldiers' Home, or at any public institution of the State of Montana, and burial for any cause shall not be made in the coun-

ty of the former residence of the deceased, the officers of said State Soldiers' Home or of any public institution of the State of Montana, as aforesaid, shall provide the proper burial herein prescribed . . ."

It is to be noted that this amendment did not include the wives or widows who were inmates of the home and who had become residents of the home as provided by Chapter 87, Laws of 1903, now Section 1536, Revised Codes of Montana, 1935.

The Veterans' Burial Act was again amended by Chapter 181, Laws of 1931, and expressly included "any inmate of the Montana Soldiers' Home." The Section in question is now Section 4536, Revised Codes of Montana, 1935.

Chapter 163, Laws of 1937, amended Section 4536 and excluded inmates of the Montana Soldiers' Home. Section 4536 was again amended by Chapter 52, Laws of 1939, but no change was made in regard to the inmates of the home.

As the law now stands the burden of defraying the cost of burial of women inmates of the Montana Soldiers' Home is upon the home itself, where other provision for burial is not made.

Section 11034, Revised Codes of Montana, 1935, provides in part:

"1. If the deceased was a married man or woman, the duty devolves upon the husband, or wife.

"2. If the deceased was not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age and within this state, if possessed of sufficient means to defray the necessary expenses."

This section places the obligation of defraying the cost of burial upon the kindred of the deceased, if any, coming within the above designated; in the event there are no relatives as designated, then it devolves on the Montana Soldiers' Home.

It is therefore my opinion that the Montana Soldiers' Home is not compelled to defray the cost of burial expenses of deceased women inmates of the home where they have relatives as defined in Section 11034, Revised Codes of Montana, 1935, who have sufficient means to defray the necessary expenses.

However, where there are no such relatives, the expense of burial of deceased women inmates must be paid by the Montana Soldiers' Home.

Sincerely yours,
R. V. BOTTOMLY
Attorney General