

**Opinion No. 84.****World War Veteran—Veteran, Burial Expenses—Burial Expenses of World War Veteran—County Commissioners.****Held: The county is liable for the \$150.00 burial expense and such amount must be paid to the widow of said veteran, assuming that the burial expenses were paid by her.**

October 23, 1945.

Mr. Thomas Dignan  
County Attorney  
Valley County  
Glasgow, Montana

Dear Mr. Dignan:

You request my opinion as to whether or not the widow of a World War veteran, a resident of Valley County, who went to California at his doctor's request to secure medical treatment, and died there while securing such medical treatment and was consequently buried there, is entitled to \$150.00 burial expenses in accordance with Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 25, Laws of 1945.

Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 25, Laws of 1945, states in part 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, 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 person, whether male or female, and including nurses, who shall have served in any branch of the armed services of the United States and who may hereafter die.

Such burial shall not be made in any burial grounds or cemetery, or in any portion of any burial grounds or cemetery, used exclusively for the burial of pauper dead; provided, (1) 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, and provided (2) that the benefits hereof shall not be available in the case of any decedent whose executor, administrator or heirs waive the benefits hereof.

**"In the event any such honorably discharged person, male or female, who shall have served in the armed services 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, and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided."** (Emphasis mine.)

This office held in Opinion No. 275, Volume 19, Report and Official Opinions of the Attorney General:

"Under Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 52, Laws of 1939, and following sections, it is mandatory on Board of County Commissioners of County of bona fide residence of deceased honorably discharged soldier, sailor, marine or nurse who served in U. S. Army, Navy, Marine Corps, or Army Reserve Corps to pay the sum of \$150.00 expense of burial, except where benefit is waived by executor, administrator or heirs."

This office also held in Opinion No.

428, Volume 19, Report and Official Opinions of the Attorney General:

"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."

See also in this connection Opinion No. 433, Volume 19, Report and Official Opinions of the Attorney General.

It is therefore my opinion that the county is liable for the \$150.00 burial expense as provided in the above quoted section and such amount must be paid to the widow of said veteran, assuming of course that the burial expenses were paid by her to the extent of the minimum amount and type as specified in Section 4536, Revised Codes of Montana, 1935, as amended, supra. The county is obliged by specific statutory provision to pay the \$150.00 burial expense except in those cases where the executor, administrator or heirs waive the benefits of said burial expense.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General