

Opinion No. 54

**Veterans—Honorably Discharged Veterans—Expense—Burial Expenses
for Deceased, Honorably Discharged Veterans — County
Commissioners—Duties of Payment for Burial Expenses**

Held: It is mandatory upon the Board of County Commissioners to cause any honorably discharged veteran, 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, to be given a decent and proper burial, the cost of which shall be \$150.00. A payment by other government sources, Federal or State, shall relieve this burden only to the extent of the payment, and the balance up to \$150.00 is to be paid by the County. A complete burial by the Federal Government or the Veterans Administration with all of the expenses paid, if authorized by the proper parties, relieves the County of

any obligation and constitutes a waiver of the County benefits. The honorably discharged deceased veteran must be qualified under the statute. The payment shall be made to the executor, administrator, heir, or veterans burial supervisor, as the case may be, who causes and contracts the funeral services to be conducted.

September 12, 1949.

Mr. E. J. Callaghan,
State Service Officer
Veterans' Welfare Commission
Helena, Montana

Dear Mr. Callaghan:

You have submitted the following questions, "Whether it is mandatory that the County pay the entire \$150.00 towards the burial of a deceased veteran, or whether or not only the amount of the actual expenses borne by relatives or other parties in the burial of the deceased veteran?" Secondly, "To whom may the payments be made?" The particular question about which you ask is in regard to the acceptance of a contract burial from the Veterans Administration by the relatives or others interested in the burial of the deceased veteran. The question then arises, should the County pay \$150.00 regardless of cost to the family, or should they pay the expenses incurred over the cost of burial up to \$150.00

In the first place it must be said that this opinion will confine itself only to the application of Chapter 25 of the Session Laws of 1945, which amended Section 4536 of the Revised Codes of Montana, 1935, as amended by Chapter 163, Session Laws of 1937, and Chapter 52, Session Laws of 1939. It is apparent from Opinion No. 368 of Volume 19 of the Report and Official Opinions of the Attorney General that this law applies "only to an honorably discharged soldier, sailor, marine or nurse and does not apply to any soldier, sailor, marine or nurse who may die while in the military services of the United States."

It is my opinion that the law set out in Chapter 25, Session Laws of 1945, which amends Section 4536 of the Revised Codes of Montana, 1935 places a duty upon the Board of County Commissioners acting through a burial supervisor to see that all honorably discharged veterans described and qualified under the statute shall receive a decent and proper burial.

A portion of the above statute states:

"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."

It is apparent from the above cited section that there are three legislative mandates included therein. The principle is well recognized that:

"The word 'shall' is construed as **must** for the purpose of sustaining or enforcing an existing right, or when a public body is directed to do certain acts." (25 RCL (Statutes) Sec. 15, page 769. (Emphasis mine.)

The first direction is that the deceased shall not be buried in a "Potter's Field." Secondly, the expense of burial shall be in the amount of one hundred fifty dollars (\$150.00). The money is to be paid from a County fund, to be paid by the County Commissioners. Evidently the legislature has decided that \$150.00 will defray the expenses of a proper and decent burial. The third mandate is that benefits shall not be available in case the benefits are waived by the proper party. Such party is either the executor, administrator or an heir, depending upon the circumstances,

Since the executor, administrator, or the heirs have the power to waive the benefit, it follows, though the statute does not so designate, that these are proper parties to accept the benefits. This assumes that the party accepting the benefit is the party contracting for the funeral services.

If there is no participation by the executor, administrator or heirs, it is the duty of the veterans' burial supervisor for the County to cause and contract for the burial of these honorably discharged deceased veterans. In the event of no family participation, the payment for burial services shall be made through him. A portion of Chapter 25, Session Laws of 1945, reads:

"Section 4536. It shall be the duty of the Board of County Commissioners of each County in this State to designate some proper person in the County, who shall be known as the 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 may hereafter die. . . ."

It is not contemplated by the act that the relatives will bear any of the \$150.00 of the cost of a decent burial. They may make a temporary outlay of funds for the burial, but it is intended that the County will reimburse them for this expense. The law is inelastic. It states the burial expense shall be one hundred fifty dollars (\$150.00) which, as far as the County is concerned, is both a maximum and a minimum for a proper and decent burial.

The law places a duty upon the County to cause to be decently interred any deceased honorably discharged veteran qualified under the statute. It provides that the County shall see that a one hundred fifty dollars (\$150.00) burial is provided for. This is to be paid for by the County unless waived by the executor, administrator, or heirs of the decedent. It would be unreasonable and without the legislative contemplation to say that the County is obligated to pay the \$150.00 when the matter is taken care of by a claim against the Veterans' Administration.

The idea behind all of the legislation, both Federal and State, is to relieve some of the burden on the families of these deceased veterans. If this is amply taken care of by the Federal government there is no longer a duty on the County or State. If the Veterans' Administration or some other person or organization takes care of only part of the \$150.00 cost, I deem it the duty of the county to provide for the difference between the amount provided by the Veterans' Administration and \$150.00. It should be said that if the benefits are derived from other government sources that that shall constitute a waiver to the extent of the amount received, but the County is under a duty to provide the balance up to \$150.00. A complete burial by the Federal government or the Veterans' Administration, with all of the expenses paid, if authorized by the proper parties, relieves the county of any obligation and constitutes a waiver of the County benefits.

I call your attention to Op. No. 285 in Vol. 17 of the Attorney General's Opinions. The reasoning there concurs generally with that of this opinion. I also refer you to Op. No. 84 in Vol. 21 and Op. No. 449 in Vol. 15 of the Attorney General's Opinions. I disagree with the latter Opinion to the extent that by the wording of Chapter 25, Session Laws of 1945, it is clear that the legislature intended that the law be applicable to "any" honorably discharged veteran. Consequently the act applies to all honorable discharged deceased veterans, male or female, qualified under the statute, and there is no reference made to the economic status of the deceased or his family.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.