

**Addendum to Opinion No. 65.
Volume 25, Opinions of the Attorney
General.**

This office has been advised that Opinion No. 65, Volume 25, Opinions of the Attorney General, has been the subject of question and misinterpretation. The opinion issued on March 6, 1954, primarily concerns the burial allowance to honorably discharged, released, relieved, transferred or retired service people. In that opinion the following language, the subject of misunderstanding, is found:

“ . . . A complete burial by the Federal Government of the Veterans Administration, with all expenses paid relieves the county of any obligation and constitutes a waiver of county benefits.”

This statement means what it says, namely, that where all expenses of burial have been assumed and paid by a governmental agency and there are no further expenses to be paid, then and only then is the county relieved of its mandatory duty. The county, by Section 71-120, R. C. M., 1947, is obligated to pay expenses of burial in proper cases up to and including the sum of \$150.00. The law was not intended to make a gift of \$150.00 to the survivors of a veteran in cases where those survivors did not pay any of the costs. Neither was it intended to limit the costs of a proper burial in cases where additional funds were available from other sources. The county's obligation is mandatory to pay the \$150.00 in every case where a qualified veteran dies. The burial law limits the sum to which the county may be obligated to \$150.00. This sum of money is to be paid for burial expenses. There is no provision in the statute permitting the county to withhold the payment on the grounds that there may be funds available from other sources. Nor is there any provision in the statute requiring the applicant to apply to other sources for burial expenses prior to making application for county benefits.

In those cases where the Federal government or Veterans' Administration pays only a part of the burial expenses, the county is obligated to pay the remaining expenses, up to and in-

cluding \$150.00. For example, should the Federal government or Veterans' Administration pay part of the burial expenses in the sum of \$150.00 and the total amount of the burial expenses amounted to \$300.00, the county would in such a case be obligated to pay the sum of \$150.00 over and above the \$150.00 expended by the Federal government.

**Opinion No. 65.
Veterans — Honorably Discharged —
Burial Expenses for Deceased —
Duties of Payment for Burial —
Separation From Service
— Reserve Status.**

HELD: That the intent of the State's Veterans' Burial Law is to require the county to pay in every case of a service person honorably relieved, released, transferred or retired from active duty status. A complete burial by the Federal government or the Veterans' Administration, with all expenses paid, relieves the county of any obligation and constitutes a waiver of the county benefits.

March 6, 1954.

Mr. E. J. Callaghan, Director
The Veterans' Welfare Commission
Horsky Block
Helena, Montana

Dear Mr. Callaghan:

You have requested my opinion as to whether a deceased serviceman or woman who has been released from active duty with the armed forces but who has not received a formal honorable discharge is entitled to have paid by the county the burial allowance as provided in Montana law.

The law referred to, Section 71-120, R. C. M., 1947, reads as follows:

“Burial Of Deceased Soldiers, Sailors And Marines. 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 executors, 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.

"Whenever any such honorably discharged person, male or female hereinbefore described shall die at any public institution of the State of Montana, other than the State Soldiers' Home, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state institution, as aforesaid, shall provide the proper burial herein prescribed except that the expense of each burial shall not exceed the sum herein allowed, which expense shall be paid by the county in which the decedent resided at the time of entry into such institution, but no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment."

Under the Federal laws relating to release from active duty, many of the servicemen and women will not receive formal honorable discharges. Under the present laws, those released upon the conclusion of their active duty are either retired or transferred to an inactive status in the Reserve Corps. (Ch. 25 of Title 50, U. S. C. A., War and National Defense; 34 U. S. C. A. §853 c, 853 d.) Surely the State Legislature did not intend to discourage membership in the Reserve Corps by requiring complete separation as a condition to the receipt of the benefit. Cases interpreting the words "honorable discharge" with respect to Civil Service laws, and other laws designed to benefit the returning veteran, have not required that the veteran be separated from the Reserve. *Quam vs. City of Fargo*, 77 N. D. 333, 43 N. W. (2d) 292, 296; *Dierkes v. City of Los Angeles*, 25 Cal. (2d) 938, 156 Pac. (2d) 741; *Gibson v. City of San Diego* (Cal.) 156 Pac. (2d) 737.

In the *Dierkes* case, supra, the Court was called upon to interpret the phrase "who shall have returned to such department (police department) within a period of one year after having been honorably discharged from war service." The Court there said:

"We are satisfied that the words 'honorably discharged from such service' must be construed to mean, in a proper case, honorably relieved, released, transferred, or retired from active duty status, . . ."

The foregoing definition is proper and realistic. The veterans' burial law (71-120, supra) was never intended to penalize the families of veterans continuing to serve their countries in a reserve capacity. My office has rendered two previous opinions on the interpretation of the law in question—23 Opinions of Attorney General 145, No. 54, and 24 Opinions of Attorney General, No. 90. Of particular pertinence is Opinion No. 54, supra, wherein it states:

"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."

It is, therefore, my opinion that the intent of the State's Veteran's Burial Law is to require the county to pay in every case of a service person honorably relieved, released, transferred or retired from active duty status. A complete burial by the Federal government or the Veterans' Administration, with all expenses paid, relieves the county of any obligation and constitutes a waiver of the county benefits.