

1166.

PAYMENT OF BURIAL EXPENSE MANDATORY, WHEN—
CREMATION.

SYLLABUS:

1. Under the provisions of Section 1359-10, General Code it is the mandatory duty of the Division of Aid for the Aged to order paid to the proper person entitled thereto, a sum not to exceed \$100.00 to defray the burial expenses of a deceased person formerly a recipient of old age assistance. In addition thereto, the Division of Aid for the Aged shall pay the cost of a grave.

2. The term "burial expenses," as that term is used in Section 1359-10 of the General Code, not only includes expenses incurred in the actual burial of the remains of a recipient of old age assistance, but also embraces the expenses incurred in cases where the remains of such deceased person are cremated.

COLUMBUS, OHIO, September 16, 1937.

HON. H. J. BERRODIN, *Chief, Division of Aid for the Aged, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication, which reads as follows:

"Please give us a written opinion on the question of whether the Division is authorized to make awards for cremation charges. Section 1359-10 of the General Code of Ohio, provides that 'upon the death of a recipient of aid, any monthly installment then accruing, and additional installments under his certificate of aid, not exceeding in the aggregate the sum of \$100.00 shall, within sixty days be ordered paid to the proper person entitled thereto to defray the burial expenses of such deceased person. The cost of the grave shall be paid by the division.'

We have received several requests from funeral directors for allowances of charges for cremation and in all of such cases there has been no request for an allowance for the cost of grave. It would seem that cremation is a recognized method of disposing of the dead, it being a substitute for the actual burial of the body. In other words, instead of burying the body in the grave, the body is cremated and the ashes preserved, usually we understand, in urns. Therefore, it would seem that

the law would be broad enough to cover such charges.

Since we have a number of applications for awards being held up for this reason, we would appreciate your giving us a prompt opinion."

Section 1359-10, General Code, reads as follows:

"Upon the death of a recipient of aid, any monthly installment then accruing, and additional installments under his certificate of aid, not exceeding in the aggregate the sum of \$100.00 shall, within sixty days be ordered paid to the proper person entitled thereto to defray the *burial* expenses of such deceased person. The cost of the grave shall be paid by the division.

An application, under oath, for such an award for burial expenses shall be filed by the proper person entitled thereto.

An itemized sworn statement of the *burial* expenses must be submitted by the undertaker." (Italics the writer's.)

The above section is the only provision of the General Code which authorizes the payment by the Division of Aid for the Aged of expenses incurred in the burial of a recipient of old age assistance. It will be specifically noted that the money to be expended, which shall not exceed the sum of \$100.00, shall only be ordered paid to the proper person entitled thereto to defray the expenses incurred in the burial of such deceased person. Therefore, in order to arrive at a proper determination of the question presented by your inquiry, it becomes necessary to herein distinguish between the two modes of disposing of the remains of a deceased person, namely, cremation and burial.

Webster defines the word "cremate" as follows:

"To burn; to reduce to ashes by the action of fire, either directly or in an oven or retort; to incremate or incinerate; as, to cremate a corpse, instead of burying it."

Webster defines "burial" as follows:

"Act of burying; especially the depositing of a dead body in the earth, in a tomb or vault, or in the water, usually with attending ceremonies; sepulture; interment."

Obviously, the plain distinction between "cremation" and "burial" in so far as your particular question is concerned, is the act of burial.

By a strict application of the rules of statutory construction, it might be correctly stated, that the provisions of Section 1359-10, supra, do not authorize the expenditure of money by the Division of Aid for the Aged in cases where the remains of a recipient of old age assistance are disposed of in any other manner than by burial. However, Section 1359-29 of the General Code, provides as follows:

“This act shall be liberally construed to accomplish the purposes thereof. Nothing herein shall be construed as repealing any other act or part of an act providing for the support of the poor except insofar as plainly inconsistent herewith, and the provisions of this act shall be construed as an additional method of supporting and providing for the aged poor.”

Applying the rule of construction set forth to the provisions of Section 1359-10, supra, it is apparent that it was the intention of the Legislature in the enactment of Section 1359-10, supra, that the expense incurred in the disposition of the remains of a recipient of old age assistance should be paid by the Division of Aid for the Aged, regardless of whether such disposition was occasioned by either cremation or burial.

Therefore, it is my opinion, in specific answer to your question, that:

1. Under the provisions of Section 1359-10, General Code, it is the mandatory duty of the Division of Aid for the Aged to order paid to the proper person entitled thereto, a sum not to exceed \$100.00 to defray the burial expenses of a deceased person, formerly a recipient of old age assistance. In addition thereto, the Division of Aid for the Aged shall pay the cost of a grave.

2. The term “burial expenses”, as that term is used in Section 1359-10 of the General Code, not only includes expenses incurred in the actual burial of the remains of a recipient of old age assistance, but also embraces the expenses incurred in cases where the remains of such deceased persons are cremated.

Respectfully,

HERBERT S. DUFFY,

Attorney General.