

by a non-resident judge and the transcripts taken to his home county for use there. You also indicate that such transcripts were ordered long after the cases in which the notes taken were terminated, and that the use of said transcripts had no relation to the cases in which said notes were taken. Clearly then, in view of the previous citations and discussion, the cost of such transcripts cannot be taxed as costs, and it follows that the provisions of sections 1552 and 1553 G. C. relating to the charge for a transcript when ordered by the court do not apply.

It is believed that when services are rendered to the court by a court stenographer, the only compensation which may be paid from the public treasury for such services is the salary provided in section 1550 G. C., except in those cases in which transcripts have been properly made for use in the particular case in which the record was taken.

In specific answer to your inquiry, based upon the facts submitted and the statutes cited, it is my opinion that there is no authority whereby a court stenographer may receive compensation from the public treasury other than that provided in section 1550 G. C. for services such as your letter describes. It of course follows that no such charges could be taxed against the judgment debtor.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2018.

EXPENSES OF BURIAL OF INDIGENT PERSON—HOW PAID—WHEN
INDIGENT PERSON LEGAL RESIDENT OF TOWNSHIP OR MUNI-
CIPAL CORPORATION.

Where an indigent person is a legal resident of the county, the expenses of the burial of such person should be paid by the township in which he had a legal residence at the time of his death; but if such person was also a legal resident of a municipal corporation, the expenses of his burial should be paid by the municipal corporation and not by the township wherein such corporation is situate.

COLUMBUS, OHIO, April 22, 1921.

HON. J. F. HENDERSON, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—Attention has been given to your request for the opinion of this department on a matter stated by you as follows:

“The child of an indigent parent died here in the city of Ashland. The public nurse notified the township trustees but without any reply the undertaker buried the child.

Sec. 3495 G. C. seems to apply to this case, but whether or not the city of Ashland should pay or whether the township of Montgomery, in which Ashland is situate, should pay is the question. The city of Ashland has no poor fund, the township trustees having been making all the levy for poor purposes and taking care of the poor in the entire township, including the city of Ashland. Under this section could we send this bill on to the county commissioners?”

Section 3495 G. C., prior to the recent amendment thereof hereinafter referred to, read thus:

“When information is given to the trustees of a township or proper officer of a municipal corporation, that the dead body of a person, having a legal settlement in the county, or whose legal settlement is not in the state or is unknown, and not the inmate of a penal, reformatory, benevolent or charitable institution, has been found in such township or corporation and is not claimed by any person for private interment at his own expense or delivered for the purpose of medical or surgical study or dissection in accordance with law, they shall cause it to be buried at the expense of the township or corporation, but, if such trustees or officer notify the infirmary directors, such directors shall cause the body to be buried at the expense of the county.”

Under this section as it existed in the form just above set forth, the occasion seldom, if ever, arose for deciding the question of responsibility for burial expenses as between the trustees of a township, on the one hand, and the officers of a municipal corporation on the other; this for the reason that the last part of said section, to-wit,

“* * * if such trustees or officer notify the infirmary directors, such directors shall cause the body to be buried at the expense of the county,”

operated as a matter of law and of practice to fasten the obligation to pay such expenses upon the county. In this connection, see Annual Report of Attorney-General for 1912, Vol. II, p. 1357; Opinions of Attorney-General for 1915, Vol. I, page 547; Opinions of Attorney-General for 1917, Vol. I, page 168.

Said section was, however, amended in 108 O. L., Part I, p. 274, to read thus:

“Sec. 3495. When the dead body of a person is found in a township or municipal corporation, and such person was not an inmate of a penal, reformatory, benevolent or charitable institution, in this state, and whose body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with the provisions of section 9984, it shall be disposed of as follows: If he were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death; if he had a legal residence in any other county of the state at the time of his death, the infirmary superintendent of the county in which his dead body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death, but if he had no legal residence in the state, or his legal residence is unknown, such infirmary superintendent shall cause him to be buried at the expense of the county.

It shall be the duty of such officials to provide at the grave of such person, a stone or concrete marker on which shall be inscribed the name and age of such person, if known, and the date of death.”

It will be observed that since the above amendment the county is liable for burial expenses only where the person

"* * * had no legal residence in the state, or his legal residence is unknown."

And "*if he were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death.*"

The question is as to the meaning of the matter underscored, when the indigent buried at public expense is found in a municipal corporation which is situate within a township (the boundaries of the municipal corporation not being co-extensive with the boundaries of the township. See section 3512 G. C.).

Two possible constructions present themselves. (1) That the sentence in question gives concurrent power to both the township and the municipal corporation to pay the burial expenses of the indigent. (2) That said sentence has the meaning it would have if phrased thus:

"If he were a legal resident of the county, the proper officers of the township in which his body was found (or, in case the body was found within a municipal corporation, then the proper officers of such corporation), shall cause it to be buried at the expense of the township in which he had a legal residence at the time of his death; but if such person was a legal resident of a municipal corporation, he shall in such case be buried at the expense of such municipal corporation and not of the township wherein such corporation is situate."

The sentence in question being ambiguous, consideration may properly be given to the effects and consequences which follow from construing it in the one way or in the other, and that construction may be adopted which will best tend to make the same effectual. Black on Interpretation of Laws (2nd ed.), p. 100.

To say that both the township trustees and the officers of the municipal corporation have the *power* to pay the expenses of a pauper burial, falls short of providing effectively for their payment, for in such a matter the important thing is to know whose *duty* it is to pay.

Being impressed that the second of the two possible constructions, above suggested, makes for a more workable method in practice, it is my opinion that the same should be adopted.

In your letter you say that the child died in the city of Ashland. Whether or not the child had a legal residence in that city, is not just clear. Assuming, however, that the child did have a legal residence in the city of Ashland, I am of the opinion that the necessary and proper expenses of its burial should be paid by the city and not by Montgomery township.

Your statement is also noted that the city of Ashland has no poor fund, and that the township trustees have been making all the levy for poor purposes and taking care of the poor in the entire township, including the city of Ashland. Your attention is called to the fact that no city has a poor fund, *as such*. That is to say, that the relief of the poor in a city is a matter over which the department of public safety has jurisdiction, and moneys in the public safety fund may properly be drawn upon for poor relief purposes, including the burial of indigent paupers.

Attention has also been given, in answering your question, to the provisions of the charter of the city of Ashland, but nothing therein is noted which conflicts with the views above expressed.

Respectfully,

JOHN G. PRICE,
Attorney-General.