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1. COUNTY COMMISSIONERS, BOARD OF—AUTHORIZED BY SECTION 2949-4 G. C. TO PROVIDE FOR CARE OF GRAVE OF HONORABLY DISCHARGED SOLDIER, SAILOR, MARINE OR NURSE—BURIED IN CEMETERY PLOT OR GRAVE SPACE—SPACE PURCHASED BY BOARD OR DONATED BY PRIVATE INDIVIDUAL.
2. SOLDIERS' RELIEF COMMISSION—ACQUIRED PLOT OF GROUND—SECTION 2943 G. C.—BURIAL OF NEGLECTED AND INDIGENT SOLDIERS—COUNTY COMMISSIONERS WITHOUT AUTHORITY TO PAY EXPENSE OF MAINTAINING GRAVES—SECTION 2945 G. C. DEVOLVES EXPENSE ON TOWNSHIP OR MUNICIPALITY WHERE REMAINS BURIED.

SYLLABUS:

1. A board of county commissioners is authorized by Section 2949-4, General Code, to provide for the care of the grave of an honorably discharged soldier, sailor, marine or nurse who is buried in a cemetery plot or in a grave space acquired pursuant to the provisions of that section, whether such space has been purchased by said board or has been donated by a private individual.

2. If a plot of ground has been acquired by a soldiers' relief commission pursuant to Section 2943, General Code, for the burial of neglected and indigent soldiers, the board of county commissioners is without authority to pay the expense of maintaining such graves, such expense being devolved by Section 2945, on the township or municipality in which such remains are buried.

Columbus, Ohio, April 25, 1951

Hon. Harold D. Roth, Prosecuting Attorney
Wyandot County, Upper Sandusky, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"The Board of County Commissioners of Wyandot County, Ohio, have requested an opinion as to whether or not they are authorized to pay for the maintenance and upkeep for graves of veterans of the Civil War, which are located upon the grounds of a cemetery association. These graves are scattered through the cemetery and are not in a plot set aside to be exclusively used for interring the remains of deceased veterans.

"Section 2949-4 of the General Code provides that the board of county commissioners, trustees or council of a municipality . . . are authorized and empowered to purchase *space* for the graves of veterans . . . and provides for caring for the same. . . .

"Section 2961 permits the board of county commissioners to care for that part of a cemetery set aside for the burial of veterans.

"It appears from these sections that the county commissioners can purchase *space* in a cemetery for a veteran, and then provides for its care.

"1. Do the board of county commissioners have authority to provide for the care of graves of veterans of the Civil War, where the graves of the veterans were in the first instance purchased by private individuals?

"2. If a plot of ground is set aside in accordance with Section 2943 et seq. of the General Code and veterans are buried or reinterred in said plot, can the board of county commissioners pay for the care and maintenance of said plot, and if so, is

such sum thus paid additional to the allowance provided for in Section 2945 of the General Code?"

By the provisions of Section 2943 et seq., General Code (99 Ohio Laws, p. 443) the soldiers' relief commission of a county is authorized to purchase or provide a soldiers' plot in any cemetery, "for the burial, removal and re-interment of the bodies of neglected and indigent soldiers." By Section 2944, it is provided that the expense of such purchase shall be paid from the general fund of the county. The third section of said Act, Section 2945, General Code, reads as follows:

"On and after the interment of the remains of the deceased soldier or soldiers in such soldiers' plot, the expenses of the care of the grave or graves shall be annually provided for by the village, city or township, in which the remains are buried, at not to exceed fifty cents per grave each year, and shall be paid annually to the cemetery association in which the remains may be interred, removed or reinterred."

By subsequent legislation found in 102 Ohio Laws, page 75, the first section of said Act was slightly amended and additional provision was made authorizing the purchase of additional plots of ground where the original plot had been filled with graves to its capacity.

Still later, by an Act found in 109 Ohio Laws, page 145, Sections 2949-2, 2949-3 and 2949-4, General Code, were enacted. The first of these sections authorizes the county commissioners of any county, the township trustees and council of cities and villages located in any county to enter into contracts with cemetery associations, providing for the purchase and maintenance in cemeteries of such county, of plots of ground for the burial of honorably discharged soldiers, sailors, marines and nurses who have been in the service of the United States in time of war. This section further provides that the burial plots shall be paid for from the treasury of the county, township or municipality contracting for the same. Section 2949-4, General Code, reads as follows:

"In case it is desired to bury the body of any such deceased soldier, sailor, marine or nurse in any cemetery not provided with a plot as aforesaid, the board of county commissioners, any board of township trustees or the council of any municipality in the county in which such cemetery is situated are hereby authorized and empowered to purchase a space for the grave of such soldier, sailor, marine or nurse and to provide for caring for same, paying the amount of such purchase price and maintenance

cost from the funds in the treasury of such county, township or municipality.”

In this last section it will be noted that the county commissioners are authorized to purchase “a space” for the graves of such a soldier, etc., where no plot has been provided, and to provide for and pay the cost of caring for the maintenance of the grave from funds in the county treasury.

It appears to me that it was the intention of the legislature to give the county abundant power to provide for the proper burial of soldiers, etc. quite independent of, and in addition to the power given to the soldiers’ relief commission to provide a plot for the burial of neglected and indigent soldiers, and further to insure that the grave of such soldier would be kept and maintained in a presentable condition. Having that purpose in mind, I cannot see that it would be stretching the authority of the board of county commissioners to assume that in case someone else furnished a burial space for such soldier without cost to the county the commissioners would be authorized to pay the expense of maintaining and caring for such grave. The question of legal title as to a burial space is certainly not of any moment, because neither the county nor anyone else could use that space for any purpose except for the burial of the soldier in question, and when so used it could not be considered as an asset or property of the county for any purpose. Furthermore, it appears to me that the power to purchase space for a grave and the power to care for such grave are independent of each other.

Section 2961, General Code, to which you refer, appears to relate mainly to the care of monuments and memorials to soldiers and sailors, but it can be construed to include the care of their graves as well. At any rate, it appears to lend force to what seems to be the general policy of the legislature, viz., to give the county abundant authority to see to it that the graves of its soldiers and sailors shall not be allowed to be neglected.

The provisions of Sections 2949-4 and 2961, General Code, are quite independent of the statute relative to the power of the soldiers’ relief commission to acquire a burial plot for the burial or interment of *neglected and indigent* soldiers. Moreover, it will be noted that the expense of caring for the graves of such neglected and indigent soldiers

is to be borne not by the county but by the township or municipality in which the remains are buried.

Accordingly, it is my opinion that:

1. A board of county commissioners is authorized by Section 2949-4, General Code, to provide for the care of the grave of an honorably discharged soldier, sailor, marine or nurse who is buried in a cemetery plot or in a grave space acquired pursuant to the provisions of that section, whether such space has been purchased by said board or has been donated by a private individual.

2. If a plot of ground has been acquired by a soldiers' relief commission pursuant to Section 2943, General Code, for the burial of neglected and indigent soldiers, the board of county commissioners is without authority to pay the expense of maintaining such graves, such expense being devolved by Section 2945, on the township or municipality in which such remains are buried.

Respectfully,

C. WILLIAM O'NEILL

Attorney General