

**Note from the Attorney General's Office:**

1973 Op. Att'y Gen. No. 73-073 was modified by  
1995 Op. Att'y Gen. No. 95-012.

## OPINION NO. 73-073

## Syllabus:

R.C. 5113.15 does not authorize a board of township trustees to pay for the burial of an indigent when the body is claimed by any person for private interment.

To: Michael Nolan, Athens County Pros. Atty., Athens, Ohio  
By: William J. Brown, Attorney General, July 25, 1973

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

Your opinion is requested on the interpretation of Section 5113.15 of the Ohio Revised Code, the pertinent part of which provides:

"When the body of a dead 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 such body is not claimed by any person for private interment at his own expense..."  
(Emphasis added)

There are situations in which indigents claim a body of a relative and the burial is provided by a funeral home. Then the funeral home finds itself in a position unable to receive payment for the funeral cost.

My question is this: Does Section 5113.15 of the Ohio Revised Code require that a Board of Township Trustees pay for indigent burials when other requirements of said section are met?

The entire statute (R.C. 5113.15) reads as follows:

"When the body of a dead 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 such 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 section 1713.34 of the Revised Code, it shall be disposed of as follows:

(A) If such person was a legal resident of the county, the proper officers of the township or municipal corporation in which his body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

(B) If such person had a legal residence in any other county of the state at the time of his death, the superintendent of the county home of the county in which such body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

(C) If such person had no legal residence in the state, or his legal residence is unknown, such superintendent shall cause him to be buried at the expense of the county.

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

In construing this Section, my predecessors have advised that it imposes a duty upon the township, municipal corporation, or county in the situations in which the statute refers to them. See, e.g., Opinion No. 2018, Opinions of the Attorney General for 1921; Opinion No. 366, Opinions of the Attorney General for 1927; and Opinion No. 740, Opinions of the Attorney General for 1946.

However, the instant question has apparently not been answered earlier. That question, as I understand it, goes to the meaning of "claimed by any person for private interment at his own expense" (R.C. 5113.15). Does this phrase cover all situations in which the body is claimed by a person for private burial, or only those in which that person intends to pay for the funeral? In other words, may a relative or friend of the deceased claim the body, arrange for the funeral with a commercial undertaker, and then have the bill sent to the township?

I do not believe that this practice is authorized, even if all the other requirements of R.C. 5113.15 are met. It is well settled that townships, like counties, have only those powers which are expressly delegated to them by statute, or necessarily implied by those expressly delegated. Moreover, grants of authority to expend public funds must be strictly construed, and ambiguities resolved against such authority. State ex rel. v. Pierce, 96 Ohio St. 44 (1917).

Even without these rules, the answer to your question appears in the terms of the statute. In cases where the Section imposes a duty on the township, the body "shall be disposed of as follows: \* \* \* the proper officers of the township \* \* \* shall cause it to be buried at the expense of the township \* \* \*," or "the superintendent of the county home \* \* \* shall cause it to be buried at the expense of the township \* \* \*." It is difficult to conceive how these officials could dispose of the body, or cause it to be buried, if a person had claimed the body and made arrangements for a private funeral. To construe the statutory language to authorize payment for such a funeral, even though the officials did not cause the body to be buried, would stretch that language unjustifiably.

Moreover, if the Legislature had intended to authorize reimbursement to the person claiming the body, it could easily have said so. It could have specified a procedure and a maximum limit on the cost the township, municipal corporation, or county would bear. But these specifics are absent in the statute, as is any mention of such reimbursement to a private person.

Finally, I note that the apparent purpose of R.C. 5113.15 is to provide for the burial of indigents who would not otherwise be buried, for reasons of public health and sensibilities. If the body of an indigent is claimed by relatives or friends, who arrange for the funeral according to their wishes, the situation is removed from the statutory object, and therefore, logically, from its coverage. See R.C. 1.49 (A). To construe the Section to authorize reimbursement in such a case would do nothing to accomplish the object of the statute.

Therefore, in specific answer to your question, it is my opinion and you are so advised, that R.C. 5113.15 does not authorize a board of township trustees to pay for the burial of an indigent when the body is claimed by any person for private interment.