

epileptics whose being at large is dangerous to the community, like proceedings shall be had, and like powers exercised by officers charged with like duties in the premises as is provided by law for the commitment and care of the insane."

Among the statutes to which this general reference in section 2044 G. C. sends us, is section 1953 G. C. Said section begins with these words:

"For the admission of patients to a hospital for the insane, the following *proceedings* shall be had."

The word "proceedings" also occurs in sections 1955 G. C., 1960 G. C., 1968 G. C., 1975 G. C., and 1981 G. C. No court decisions have come to our attention holding that a lunacy or epilepsy proceeding is not a "proceeding" within the meaning of section 26 G. C., and we know of no good reason for any such view.

Nor do we have any doubt that the proceeding was *pending* at the time the amended act took effect. While it is true that the said L. A. M. had, prior to that time been adjudged an epileptic (section 1956 G. C.), the power of the court over the person so adjudged was not exhausted, the court still having jurisdiction to commit to the institution for epileptics. As a matter of fact the court's jurisdiction in such cases endures after commitment of the patient to the institution and until the patient is finally discharged. *Heckman vs. Adams*, 50 O. S. 305.

You are therefore advised that the said A. S. M. is not legally liable for the payment of the bill mentioned in your letter.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

1807.

**SOLDIERS' BURIALS—COUNTY COMMISSIONERS WITHOUT AUTHORITY TO PAY EXPENSES OF BURIALS IN ABSENCE OF STEPS PROVIDED BY SECTION 2950 G. C. ET. SEQ.**

*County commissioners are without authority to pay the expenses of soldiers' burials, in the absence of the taking by the burial committee of the steps provided by sections 2950 G. C. et seq.*

COLUMBUS, OHIO, January 21, 1921.

HON. LLOYD S. LEECH, *Prosecuting Attorney, Coshocton, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter reading thus:

"A condition arises in one of the townships in this county in regard to burial relief for a deceased soldier, as provided for in sections 2950 et seq. G. C.

A, who was a veteran of the Civil war, died leaving B, his widow, surviving him. At the time of his death he possessed a small house and lot in a small country village which was used as their home, and is at the present time occupied by the aged widow as her home. No other property of any consequence being left by the deceased, and his widow does not have any income of any importance aside from her pension, to provide her with the necessities of life.

The burial committee in this township has refused, and still refuses to sign the necessary papers as provided by law to be filed with the county board of commissioners, upon which they make allowance for the burial. Burial was made of the deceased soldier and the widow is now seeking to secure payment of the burial expenses as provided for in the sections mentioned above, and the county commissioners are in favor of paying the same if they can legally do so.

We therefore desire your opinion as to whether or not the county board can make the allowance in the above case without the action of the township burial committee.

The board of commissioners is of the opinion that the widow deserves the allowance and will appreciate an early opinion from you covering the above case, together with the fact as to whether or not the burial of the deceased without the contract made by the burial committee prior to the burial, could in any way prevent an allowance of the amount at the present time."

Section 2950 G. C. (108 O. L., Part I, p. 34) says:

"The county commissioners of each county shall appoint two suitable persons in each township and ward in the county \* \* \* *who shall contract*, at a cost not to exceed one hundred dollars, with the undertaker selected by the friends of the deceased, and cause to be interred in a decent and respectable manner the body of any honorably discharged soldier \* \*."

Section 2951 G. C. says:

"The committee so appointed shall use the forms of contracts herein prescribed and abide by the regulations herein provided. Such committee shall hold their appointments *so long as they serve to the satisfaction of the county commissioners*, and when a vacancy occurs therein the commissioners shall appoint a suitable person to fill such vacancy \* \* \*."

Section 2952 G. C. says:

"Before they assume the charge and expense of any such burial, the persons so appointed shall satisfy themselves beyond a reasonable doubt, by careful inquiry, that the family of the deceased, is unable, for want of means, to defray the expenses, or that the family may be deprived of means actually necessary for their immediate support. Thereupon they shall cause to be buried such person, and make a report thereof to the county commissioners of the county, setting forth the fact that they found the family of such deceased person in indigent circumstances, and unable to pay the expenses of burial, and the name, rank and command to which he belonged if a soldier or sailor, the date of death, place where buried, occupation while living, also an accurate itemized statement of the expenses incurred by reason of such burial."

Section 2955 G. C. says:

"The undertaker shall present his itemized bill and contract to the county auditor, upon printed blanks furnished by the auditor, and make oath that he has honestly and faithfully performed his contract, and that

the bill and contract attached is a true copy of the one left with the parties who engaged his services and covers the entire expense of such funeral, in order to obtain his warrant. County auditors shall have printed such necessary blanks, and distribute them to clerks of townships of the county from whom undertakers can procure them."

Section 2957 G. C. says:

"Upon securing such report and statement of expenses the county commissioners shall transcribe in a book to be kept for that purpose, all the facts contained in such report, concerning such deceased soldier, and certify the expenses *thus incurred*, to the county auditor, who shall draw his warrant therefor, payable to the person or persons designated by the county commissioners, upon the county treasurer, to be paid from the county fund \* \* \*"

It is clear from the foregoing statutes that the legislature did not intend that the county commissioners should make the contract with the undertaker for a soldier's burial. On the contrary, section 2950 G. C. makes it clear that it is the township or ward committee "who shall contract" with the undertaker. Such contract is not to be made until said committee upon "careful inquiry" have satisfied themselves "beyond a reasonable doubt" that the family of the deceased "is unable, for want of means, to defray the expenses, or that the family may be deprived of means actually necessary for their immediate support." Whether a given family is in the condition described by the legislature is to be determined by the committee in its discretion, and its judgment in that regard is, we think, binding upon the county commissioners. The function of the committee has already been considered by this department in opinion number 281, rendered by the Attorney-General May 10, 1919, to Hon. C. A. Weldon, prosecuting attorney, Circleville, Ohio, the second head note thereto reading as follows:

"When such committee has so contracted for such burial, in conformity with the provisions of the above sections, and in the absence of fraud or collusion, the county commissioners are not authorized to review the action of said committee or modify their contract so made."

If it should be the fact, in any given case, that the burial committee arbitrarily and unjustly refused to make a contract, such conduct on their part would doubtless suggest to the county commissioners the desirability of the removal of the persons constituting such committee. In this connection, note that part of section 2951 G. C. which says:

"Such committee shall hold their appointment so long as they serve to the satisfaction of the county commissioners \* \* \*"

The observations above made respecting sections 2950 G. C. et seq. compel me to advise you, in answer to your question, that your county commissioners have no authority to pay the burial expenses of A., in the absence of the taking by the burial committee of the statutory steps.

Respectfully,  
 JOHN G. PRICE,  
 Attorney-General.