

3233.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN JEFFERSON, PORTAGE, LICKING AND CUYAHOGA COUNTIES.

COLUMBUS, OHIO, May 19, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval Contracts covering the following improvements:

Jefferson County
State Highway No. 7
Section—Trenton Street Overhead, Toronto

Portage County
State Highway No. 12
Section "U" (Overhead Reconstruction).

Licking County
State Highway No. 337
Section "F" (Bridge)

Cuyahoga County
State Highway No. 466
Section "B" (Part)

Finding said contracts proper as to form and legality, I have accordingly endorsed my approval thereon, and return same herewith to you.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3234.

COUNTY COMMISSIONERS—MUST APPOINT SOLDIERS' BURIAL COMMITTEE COMPOSED OF TWO RESIDENT PERSONS IN EACH TOWNSHIP OR WARD IN COUNTY—SECTION 2950, GENERAL CODE, CONSTRUED.

SYLLABUS:

County commissioners are required to appoint a soldiers' burial committee in each township or ward of the county, which committees shall each be composed of two persons who are located within the township or ward.

COLUMBUS, OHIO, May 19, 1931.

HON. LUTHER SWAIM, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication, which reads:

"The interpretation is requested of the first sentence of section 2950 of the General Code.

'The county commissioners of each county shall appoint two suitable persons in each township and ward in the county, other than those prescribed by law for the care of paupers and the custody of criminals, who shall, with the approval of the family or friends of the deceased, contract at a fair and reasonable price, with the undertaker selected by said family or friends, and cause to be interred in a decent and respectable manner the body of any honorably discharged soldier, sailor or marine having at any time served in the army or navy of the United States, or the mother, wife or widow of any such soldier, sailor or marine, or any army nurse who did service at any time in the army of the United States, who dies, not having the means to defray the necessary funeral expenses.'

There has been no definite ruling as to where the person shall reside. Inasmuch as the statute does apparently not require that the two persons shall be residents of the township or ward for which they are appointed, it would seem that the Commissioners could designate two persons to act as the burial committee for the whole county designating the particular wards and townships. Or that the Commissioners could appoint several bodies of two persons and each of these organizations could have more than one township or ward.

I would appreciate a construction by your office as to the exact meaning of the wording 'two suitable persons in each township and ward in the county.'

You quote in your communication section 2950, General Code. The question presented is whether or not the words "shall appoint two suitable persons in each township and ward in the county" require the appointment of a burial committee in each of the townships or wards composed of persons situated in the township or ward, or whether one or more committees composed of two persons not resident of the ward or township may be selected.

The phrase "in each township or ward" is capable of being construed as an adverbial phrase modifying the word "appoint," or as an adjective phrase modifying the word "person."

As stated in the 4th branch of the syllabus of the case of *Cochrel v. Robinson*, 113 O. S., 526:

"In the construction of a statute the primary duty of the court is to give effect to the intention of the Legislature enacting it. Such intention is to be sought in the language employed and the apparent purpose to be subserved, and such a construction adopted which permits the statute and its various parts to be construed as a whole and give effect to the paramount object to be attained."

It follows from the holding in the above case that in construing an act of the legislature, such construction should be placed thereon as to effectuate, in the most practical manner, the paramount object to be obtained.

To construe the phrase as modifying the word "appoint" would authorize the appointment of one committee to serve the whole county, which seems to be contrary to the legislative intent, since the following section requires that "such committees shall," etc., and not "such committee or committees shall," etc.

"In" is defined by Webster's New International Dictionary as follows:

- "Primarily *in* denotes situation or position with respect to a surrounding, encompassment or inclosure, denoted by the governed word."

Applying this definition of "in" to the words under discussion, it would seem that the words may be construed to read "shall appoint two suitable persons located within each township or ward in the county."

There is no doubt but that the legislative intent, by the enactment of this and related sections, was to provide for aid to be rendered in connection with the burial of soldiers, sailors and those covered by the terms of the section, where the application for aid was worthy and free from fraud. It is apparent that an advantage will accrue from having a local soldiers' burial committee to whom applications for aid may be referred, and one which would be conversant with the conditions surrounding the request for such aid.

That no economic benefit would result from allowing the appointment of burial committees for less than the whole number of townships or wards in the township is evident, since the compensation of the members of such committees is fixed by section 2951 in the amount of one dollar for each investigation. On the contrary, an increased expense would result from such a construction, viz., the expense of transportation of the soldiers' burial committee to the place where the investigation is to be made.

The language of the statute reads that "the county commissioners shall appoint two persons," etc. It is a well known rule in Ohio that the word "shall" is mandatory unless there are surrounding circumstances which negative such a construction. *State ex rel vs. Commissioners*, 94 O. S., 296, at page 306. No such circumstances exist in the instant case.

With a view to the objects to be attained by the establishment of soldiers' burial committees, and from a reading of the statute in connection with statutes in pari materia, I am of the opinion that the statute is mandatory and that county commissioners are required to appoint a soldiers' burial committee in each township or ward of the county, which committees shall each be composed of two persons who are located within the township or ward.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3235.

DEPENDENT CHILD—LEGAL RESIDENCE IN MOTHER'S COUNTY,
WHEN ABANDONED BY FATHER — SPECIFIC FACTS — WHAT
COUNTY LIABLE FOR SUCH CHILD'S SUPPORT.

SYLLABUS:

1. *Where the failure of a husband to provide for his wife results in the commitment of such wife to the County Infirmary and the later removal of the wife and a minor child from the County Infirmary to another county, legal residence may be established by the wife in the latter county.*

2. *When the mother of a minor child has established a legal residence in a county, and upon the death of the mother the child is committed to a county institution, the expense thereof is properly chargeable to such county.*