

the eligible list. The appointment must be made from the eligible list of three names certified by the Civil Service Commission and the Division of Aid for the Aged is unauthorized to appoint or suggest to the County Board who shall be appointed to assist the said Board in performing its duties under the law. The employment of persons "subject to the approval of the Division" definitely confers upon said Division the authority to disapprove an appointment of the county Board. No statutory requirements for such employees are established by the Old Age Pension Law. Therefore, the Chief of the Division is vested with discretionary powers limited only by the proposition that all public officials given such authority are answerable for a gross abuse of discretion.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4517.

COUNTY COMMISSIONERS—UNAUTHORIZED TO DEDUCT
FROM BILL OF SOLDIER'S BURIAL COMMITTEE FOR
BURIAL OF SOLDIER WHEN.

SYLLABUS:

After the soldiers' burial committee approves and certifies to the county commissioners a statement of the expenses incurred in the burial of a soldier, and in the absence of fraud or collusion, the county commissioners have no authority to deduct any amount from the bill, provided the amount paid by the county may not exceed the sum of one hundred (\$100.00) dollars.

COLUMBUS, OHIO, August 8, 1935.

HON. RAY W. DAVIS, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

"I would like to submit for your consideration, the following question, for an opinion from your office.

Do the County Commissioners of any county, have a right under Section 2950 and following, of the General Code of Ohio, relative to the burial of soldiers, the mothers of soldiers, wives or widows of a soldier, to deduct any amount from the \$100.00 allowed by statute, where the Committee in a Ward or Township from

which said person is buried finds that there are no means by which the family can pay the burial expenses, and that there has been no donation directly or indirectly toward burial of the deceased, and that there has been no life insurance payable to the estate of the deceased.

In other words, after the Committee signs the report, and the same is turned over to the County Commissioners, do the Commissioners have discretionary right where the bill is for \$100 00 or more, to deduct any amount from that bill?"

For the purpose of clarity in answering your question it is necessary to review the history of Sections 2950 and 2951, General Code.

Sections 2950 and 2951, General Code, prior to amendment in 1921 (109 O. L., 211), provided:

"Section 2950:

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 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, 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. Such burial may be made in any cemetery or burial ground within the state, other than those used exclusively for the burial of paupers and criminals."

"Section 2951:

The committee so appointed shall use the forms of contracts herein prescribed, and abide by the regulations herein provided. Such committee shall hold their appointment 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. Such committee shall see that undertakers furnish all items specified in the contract, and that when the benefits of this provision are claimed the entire cost of such funeral shall not exceed the amount herein agreed upon. The members of such committee shall receive one dollar each from the general fund of the county for each service so performed." (Italics the writer's)

These sections as amended in 1921 (109 O. L. 211), read as follows:

“Section 2950:

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. Such burial may be made in any cemetery or burial ground within the state, other than those used exclusively for the burial of paupers and criminals.”

“Section 2951:

The committees so appointed shall use the forms of contracts herein prescribed, and abide by the regulations herein provided. Such committee shall hold their appointment 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. Such committee shall see that the undertakers furnish all items specified in the contract, and that when the benefits of this provision are claimed the *entire amount to be contributed by the county toward the cost of such funeral shall not exceed the sum of one hundred dollars*, and that any remaining cost, if any, shall be paid by the family or friends of the deceased. The members of such committee shall receive one dollar each from the general fund of the county for each service so performed.” (Italics the writer’s)

The amendment of Section 2950, General Code, eliminated the limitation theretofore contained in that section that the contract was not to exceed the amount of one hundred (\$100) dollars. By the amendment it authorized the Committee, with the approval of the family or friends of the deceased, to contract with the undertaker “at a fair and reasonable price,” substituting this provision in lieu of the former provision that the committee could make a contract with the undertaker “at a cost not to exceed one hundred dollars.”

The amendment of Section 2951, General Code, eliminated the provision theretofore contained in that section specifying that “when the benefits of this provision are claimed, the entire cost of such funeral shall not exceed the

amount herein agreed upon ('herein' obviously referring back to section 2950)" and substituted in its place the provision "that when the benefits of this provision are claimed the entire amount to be contributed by the county toward the cost of such funeral shall not exceed the sum of one hundred dollars and that any remaining cost, if any, shall be paid by the family or friends of the deceased."

In Opinions of the Attorney General for 1924, Vol. I, page 624 at page 627, it is stated:

"It was therefore the apparent intent, where the deceased had friends or relatives who were able and wished to provide a more expensive burial than one hundred dollars, to permit the committee to agree thereto provided the family or friends of the deceased approved and the committee further found that the contract price was fair and reasonable, and provided further that the entire amount to be contributed by the county toward the cost of the funeral should not exceed one hundred dollars."

Section 2952, General Code, provides inter alia:

"Before they assume the charges and expense of 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 commisisoners 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 * * *, also an accurate itemized statement of the expenses incurred by reason of such burial."

Section 2954, General Code, provides that the undertaker employed to perform the services shall use blanks prescribed therein, and specify what he is to furnish for such services, and then he must sign the contract and leave a copy thereof with the Committee with whom he makes the contract.

Section 2955, General Code, provides in part:

"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. * * *."

Section 2956, General Code, provides that if a saving of money is affected by reason of donations of items covered in the contract, the amount of such saving shall go to the family of the deceased or to those who may have cared for the deceased in life or remain in the general fund of the county in the discretion of the Committee.

Section 2957, General Code, provides inter alia :

“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. * * **” (Italics the writer’s)

In Opinions of the Attorney General for 1927, Vol. I, page 364, it was held as disclosed by the second branch of the syllabus :

“2. When the committee provided for in said section (Sec. 2950) has duly contracted for such burial, in conformity with the provisions of said section, in the absence of fraud or collusion, the county commissioners are without authority to review the action of said committee or modify their contract so made.”

The above holding followed a former opinion to be found in Opinions of the Attorney General for 1919, Vol. I, page 495, which held :

“2. 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.”

It is stated in an opinion to be found in Opinions of the Attorney General for 1929, Vol. II, page 1264, at page 1266 :

“In analyzing the foregoing sections, it appears that the county commissioners, after making the appointment of the burial committee have nothing to do excepting the performance of a *ministerial duty* of certifying the results of such committee’s action to the county auditor. While such commissioners have power to appoint the committee in the first instance, and also to remove such members of the

committee, they do not have the power to exercise the discretion that is vested in such committee." (Italics the writer's.)

The latest opinion to be found on the subject is an opinion of my immediate predecessor in office to be found in Opinions of the Attorney General for 1931, Vol. II, page 744, which held as disclosed by the second branch of the syllabus:

"2. Upon the approval of a soldiers' burial committee, and in the absence of fraud or collusion in the obtaining of such approval, the commissioners of a county are required to certify to the county auditor for payment expenses incurred in the burial of an indigent soldier in the amount approved, which in no event, however, shall exceed the sum of \$100.00."

At page 746, the reasoning quoted supra in the 1919 opinion, namely, that the county commissioners, after making the appointment of the burial committee, have nothing to do except the performance of a ministerial duty of certifying the result of such committee's action to the county auditor, was approved and followed.

The opinions herein which I have reviewed appear to be soundly reasoned and consequently, in specific answer to your inquiry, it is my opinion that after the soldiers' burial committee approves and certifies to the county commissioners a statement of the expenses incurred in the burial of a soldier, and in the absence of fraud or collusion, the county commissioners have no authority to deduct any amount from the bill, provided the amount paid by the county may not exceed the sum of one hundred (\$100.00) dollars.

Respectfully,

JOHN W. BRICKER,

Attorney General

4518.

APPROVAL, CONTRACT FOR PLUMBING WORK FOR PROJECT KNOWN AS REMODELING OF DELAWARE STATE HIGHWAY GARAGE, DELAWARE, OHIO, UNITED STATES FIDELITY AND GUARANTY COMPANY OF BALTIMORE, MARYLAND, SURETY-GRIF M. LEWIS, COLUMBUS, OHIO.

COLUMBUS, OHIO, August 8, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval, a contract between