

Summarizing my conclusion, I am of the opinion that it does not follow necessarily from the fact that an extension was granted to the contractor, that a valid claim exists for additional compensation to the architect. It is only in the event that the work of the architect covers a longer period of time than was within the contemplation of the parties as the period within which the work should be completed that a claim for additional compensation may be paid. In other words, as I view the language used in the architect's contract, the determination to be made with respect to the period as the reasonable time within which the work shall be completed, does not require that specific dates be set, but does require a determination of the number of days, weeks or months reasonably necessary to perform the work. Even though there be delay in commencing the work, no claim for extra compensation of the architect can be sustained if the period of time which elapses between its commencement and the date of completion be not more than originally contemplated.

The architect to whom you refer has submitted to me a statement with respect to the facts which, if true, would seem to indicate that there was no delay in the commencement of the work beyond that which was originally contemplated, and, accordingly, he contends that eight months was within the contemplation of the parties as the period allowed for the completion of the building, whereas as a matter of fact ten months were required.

This statement is somewhat at variance with the statement in your communication in which you say "there was some delay in getting the contract signed up, which naturally held the contractor back in beginning his work." It is of course for you to determine what the true facts are, and I do not feel that I should express any views thereon. In view of what has been said, however, I assume that you will have no difficulty in applying the conclusions herein expressed to the facts as you find them.

Permit me to suggest, however, that in order that no controversy may arise in the future, your department make a record of the period of time within which contracts for state construction should be completed under reasonable conditions. It will then be a matter of no difficulty to determine in each instance whether claims for additional compensation should be allowed, in the event that contracts with architects hereafter entered into by your department contain provisions similar to those contained in section III of the contract here under discussion.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3279.

COUNTY COMMISSIONERS—AUTHORIZED TO PAY THE EXPENSES OF INDIGENT SOLDIERS' INTERMENT CONTRACTED FOR BY SOLDIERS' BURIAL COMMITTEE EVEN THOUGH FACTS SHOW UNDERTAKER WILL ALSO COLLECT THE FEDERAL ALLOWANCE.

SYLLABUS:

1. *A soldier's burial committee is not necessarily precluded from approving and certifying to the county commissioners a statement of expenses incurred in*

the burial of a soldier, by reason of the fact that a federal soldier's burial allowance is also paid.

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.*

COLUMBUS, OHIO, June 1, 1931.

HON. HARRY M. MILLER, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—Your recent opinion request reads as follows:

"Are the County Commissioners authorized to pay the expenses of a soldier's burial under Sections 2950 et seq., G. C., after the committee has approved a contract therefor, but where the undertaker provides a burial costing more than the expenses agreed to be paid by the committee, and the remainder of such expense to be paid from the fund of \$100.00 paid under the provisions of Congress for the relief of veterans?"

Section 2950, General Code, reads in part as follows:

"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. * * *

Section 2951, General Code, reads in part as follows:

"* * * 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 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. * * *

Section 2952, General Code, provides:

"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 persons, 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 2957, General Code, provides that upon securing report from such committee and statement of expenses, the county commissioners shall transcribe all facts contained in such report 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."

In analyzing the foregoing sections, as stated in an opinion found in the Opinions of the Attorney General, 1929, Vol. II, page 1264, wherein Sections 2950 et seq., General Code, were discussed:

"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. As a matter of law, such committee may not enter into a contract with an undertaker unless the basic facts relative to the family or friends of the decedent not having the means to defray the necessary funeral expenses, etc., exist. However, it appears within the power of the committee to determine whether or not such facts do exist and in the absence of fraud, collusion, or abuse of discretion, the committee's determination will not be disturbed."

Whether or not funds other than those supplied by the county, under the provisions of Sections 2950 et seq., are available for the payment of the expenses, in whole or in part, of a soldier's burial are matters to be determined by the soldiers' burial committee before any amounts are certified by it to the county commissioners.

It cannot be said as a matter of law that the federal payment of \$100.00 for the expense of a soldier's burial, precludes a township or ward soldiers' burial committee from defraying expenses in connection with the burial of such soldier.

I am, therefore, of the opinion that

(1) A soldiers' burial committee is not necessarily precluded from approving and certifying to the county commissioners a statement of expenses incurred in the burial of a soldier, by reason of the fact that a federal soldier's burial allowance is also paid.

(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 the 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.

Respectfully,

GILBERT BETTMAN,

Attorney General.