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BURIAL—RESIDENCE IN COUNTY IN WHICH VETERAN'S PLOT LOCATED, OR IN STATE OF OHIO, NOT NECESSARY PREREQUISITE FOR BURIAL IN VETERANS' PLOTS—SECTION 2943 ET SEQ., G. C.

SYLLABUS:

Residence in the county in which a Veterans' plot is located or in the State of Ohio, is not a necessary prerequisite for burial in the Veterans' plots as provided in Section 2943 et seq., General Code.

Columbus, Ohio, December 17, 1947

Hon. C. J. Borkowski, Prosecuting Attorney, Jefferson County
Steubenville, Ohio

Dear Sir:

I am in receipt of your request for my opinion, which reads:

"The return from overseas of deceased veterans is giving rise to several questions regarding burial privileges in the veterans' plot in the Union Cemetery Association ground. The Board of County Commissioners of Jefferson County under authority of Section 2949-2 of the General Code of Ohio contracted with the cemetery association for a plot of ground for the burial of honorably discharged soldiers, sailors, marines and nurses who have been in the service of the United States in time of war.

It is assumed that any honorably discharged veteran from Jefferson County is eligible. However, the statutes relative to the above question are not clear with regard to veterans living outside of Jefferson County. Here are some specific cases that have arisen:

A boy's home was in Pennsylvania. He enlisted there and died overseas. His parents are now residents of this county and would like their boy returned and buried in the Veterans' Plot in this cemetery.

A boy's home was in West Virginia. He enlisted there and died overseas. The parents still live in West Virginia but they use this cemetery for burial and would like their boy buried in the Veterans' Plot in this cemetery.

A boy's home was in an adjoining county in Ohio. He enlisted there and died overseas. His parents are now living in this county and would like their boy to be returned and buried in the Veterans' Plot in this cemetery.

A boy's home was in an adjoining county. He enlisted there and died overseas. His parents still live in an adjoining county but use this cemetery for burial and would like their boy buried in the Veterans' Plot in this cemetery.

It so happens that many families of the tri-state area, namely from West Virginia and Pennsylvania have buried many members of their family in the Union Cemetery Association in Jefferson County for generations and naturally desire to have the veterans from these families buried in the same cemetery.

Kindly advise whether one must be a resident of Jefferson County and the State of Ohio before being eligible to be buried in the Veterans' Plot in the Union Cemetery Association ground located in Jefferson County."

Sections 2943 through 2949-4, General Code, entitled "Soldiers' Burial Plot," grant counties the authority to establish Veterans' plots. Section 2949-2, General Code, referred to by you in your request for my opinion, authorizes the county commissioners, township trustees or councils of cities and villages to enter into contracts to provide Veterans' plots. The provisions of Section 2949-2 are:

"That the board of county commissioners of any county and township trustees and councils of cities and villages, located in any county, are hereby empowered and authorized to enter into contracts with cemetery associations providing for the purchasing and maintaining in cemeteries within any such county, of plots of ground for the burial of honorably discharged soldiers, sailors, marines and nurses who have been in the service of the United States in time of war. The purchase price and maintenance cost of all such burial plots shall be paid from the treasury of the county, township or municipality contracting for same."

It is to be noted that there are no restrictions in this section as to the use of these Veterans' plots other than "discharged soldiers, sailors, marines and nurses who have been in the service of the United States in time of war."

Section 2949, General Code, states:

"The word 'Soldiers' shall mean: An honorably discharged soldier, sailor, or marine, who served in the army or navy of the United States of America. The words, 'Soldiers' plot' shall

mean: A plot of land in any cemetery, set apart to be exclusively used for interring the remains of deceased veteran soldiers of the United States."

This section places no restrictions on the definition of "Soldiers" which would limit the use of a Veterans' plot to residents of the county in which said plot is located or citizens of Ohio. Your attention is directed to the definition of "Soldiers," which clearly shows a legislative intent to include all soldiers as therein defined. The definition of "Soldiers' plot" also shows that the intent on the part of the legislature was not to limit burial to residents of the respective counties or the state of Ohio. There is no provision in this section to limit the use of Veterans' plots other than to honorably discharged soldiers, sailors or marines who served in the army or navy of the United States of America.

Section 2949-3, General Code, states:

"Any such plots owned or maintained by any county, township or municipality shall be open for the burial of the body of any such deceased soldier, sailor, marine or nurse on application to the county, township or municipality owning or maintaining the same, by a relative of such decedent, or other proper person."
(Emphasis added.)

Your attention is directed to the emphasized portion. This section does not limit the use of Veterans' plots to residents of the respective counties or the State of Ohio. The only prerequisite for burial in the Veterans' plot in a cemetery is that the deceased person be "a soldier, sailor or marine."

Section 2949-3, General Code, states that on application by a "relative of such decedent, or other proper person," the plots "shall be open for burial." This is express authority without limitation to use Veterans' plots for any veteran, irrespective of county residence or state citizenship.

Therefore, it is my opinion, and you are advised, that as provided in Sections 2949 through 2949-4, General Code, any deceased soldier, sailor or marine may be buried in a Veterans' plot as provided in said sections, without being a resident of the county in which the Veterans' plot is located, or a citizen of the State of Ohio.

Respectfully,

HUGH S. JENKINS,
Attorney General.