

Therefore, in specific answer to your question, it is my opinion that no part of the business done by a foreign corporation which maintains a business office in Ohio where its books of account and corporation records are kept and where occasional meetings of stockholders and directors are held and at which office the company receives rentals derived from the leasing of tank car equipment pursuant to written leases, all of which are executed and delivered outside of the state of Ohio, is business done in Ohio within the meaning of the term as used in section 8625-7, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5653.

OLD AGE PENSIONER—DIVISION OF AID FOR AGED MUST
PAY FUNERAL EXPENSES NOT TO EXCEED \$100.00—
ALSO COST OF GRAVE PAID BY DIVISION.

SYLLABUS:

1. *Under the provisions of Section 1359-10, General Code, as amended by House Bill No. 605, enacted in the First Special Session of the 91st General Assembly, effective July 16, 1936, it is mandatory that the Division of Aid for the Aged make burial awards to defray the burial expenses of deceased old age pensioners. If the actual burial expenses are \$100.00 or less it is mandatory that the Division of Aid for the Aged make payment of such amount to the proper person entitled thereto on the application, under oath, by such person, but in no case may the same award for burial expenses exceed \$100.00.*

2. *Under the provisions of Section 1359-10, General Code, as amended by House Bill No. 605, enacted in the First Special Session of the 91st General Assembly, effective July 16, 1936, in addition to burial expenses, the Division of Aid for the Aged must pay a reasonable amount, which amount is within their sound discretion, for the grave and the opening and closing of the same, to the proper person entitled thereto.*

COLUMBUS, OHIO, May 29, 1936.

HON. H. J. BERRODIN, *Chief, Division of Aid for the Aged; Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: I am in receipt of your communication which reads as follows:

“On April 2, 1936, the Legislature passed House Bill No. 605, amending certain sections of General Code 1359, governing

the payment of aid to the aged in Ohio. This act was approved by the Governor on April 15, 1936, and filed in the office of the Secretary of State on April 16, 1936. No emergency clause was attached to the bill, therefore it does not become effective until July 16, 1936.

We would like your written opinion, interpreting Section 1359-10, as amended. The language is somewhat vague in respect to the question of whether a funeral grant is mandatory, and also as to the amount of the same; also the language providing for the cost of the grave is not clear as to whether the same includes the opening of the grave; also as to whether there is any limit as to the cost of the same.

We are very anxious to be advised as to our duty in respect to the burial award and the cost of the grave; so that we can determine the probable cost which this amendment will entail upon the State of Ohio.

We understand that the Legislature will meet again soon, and it may be advisable for us to attempt to secure an amendment to this section. Therefore we shall appreciate very much your prompt written opinion in this matter."

House Bill No. 605, enacted in the First Special Session of the 91st General Assembly, approved April 15, and filed with the Secretary of State on April 16, will become effective as a law ninety (90) days after its filing with the Secretary of State, namely, July 16, 1936. The Act, among other things, amends Section 1359-10, General Code, which now provides:

"Upon the death of a recipient of aid any monthly installment then accruing, and not to exceed three additional monthly installments under his certificate of aid, *may* be ordered paid to a proper person entitled thereto to defray the burial expenses of such deceased person." (Italics ours.)

This section as amended provides:

"Upon the death of a recipient of aid, any monthly installment then accruing, and additional installments under his certificate of aid, not exceeding in the aggregate the sum of \$100.00 *shall*, within sixty days be ordered paid to the proper person entitled thereto to defray the burial expenses of such deceased person. The cost of the grave shall be paid by the division.

An application, under oath, for such an award for burial expenses shall be filed by the proper person entitled thereto.

An Itemized sworn statement of the burial expenses must be submitted by the undertaker.” (Italics ours.)

Although the literal meaning of the words “may” and “shall” is not always conclusive in the construction of statutes in which they are employed and one may be regarded as having the meaning of the other when that is required to give effect to other language in the statute, or to carry out the purpose of the legislature from a general view of the statute under consideration, still in view of the mandatory language in the amended statute there was an evident intention on the part of the General Assembly to effect a change so as to make the burial award mandatory. It was stated in the case of *State, ex rel. v. County Commissioners*, 94 O. S., 296, as disclosed by the third branch of the syllabus:

“3. When a section of an existing law is amended by the general assembly by striking out therefrom ‘may’ and inserting in lieu thereof ‘shall’, a clear intent is manifested to thereby alter the directory nature of the law and render it mandatory.”

Consequently it is my opinion in answer to your first question that it is mandatory for the Division of Aid For the Aged to make a grant for burial expenses not exceeding One Hundred (\$100.00) Dollars and pay such within sixty (60) days to the proper person entitled thereto.

I come now to the question presented by you with reference to the amount of the burial award. It should be noted that if the words added in the amending statute “not exceeding in the aggregate the sum of \$100.00” were to be omitted that there would be no limitation as to the amount of the burial award that the Division of Aid for the Aged would have to make “to defray the burial expenses of such deceased person”. In other words, in the absence of this qualifying phrase the Division of Aid for the Aged would have to actually defray the burial expenses at whatever cost they might be. The only reason for the addition of this phrase “not exceeding in the aggregate the sum of \$100.00” is apparently to provide that although the burial expenses must be totally defrayed by the Division of Aid for the Aged in the usual run of cases, nevertheless the award may never exceed the sum of One Hundred (\$100.00) Dollars. It is my opinion that the qualifying clause was not meant to give the Division of Aid for the Aged discretion as to the amount of the burial award so long as it did not exceed One Hundred (\$100.00) Dollars, but was merely meant to set a maximum limitation of One Hundred (\$100.00) Dollars in all burial award cases, and the words “not exceeding” were for the additional purpose that if the actual burial expenses were less than One Hundred (\$100.00) Dollars, the burial award could only be for such

actual cost even though such amount might, in a particular case, be less than the One Hundred (\$100.00) Dollars.

Coming now to your third question relative to the meaning of the language in Section 1359-10, General Code, "the cost of the *grave* shall be paid by the Division." In this connection the language employed in the first branch of the syllabus of the case of State, ex rel. Brownell v. Industrial Commission of Ohio, 131 O. S. 124, reported in Ohio Bar Association Report, May 25, 1936, issue, is pertinent:

"1. In the construction of a statute no part of the language employed should be ignored or disregarded."

Webster's 20th Century Dictionary defines "grave" as:

"1. A pit or place excavated for the purpose of burial of a dead body; a place for a corpse to be deposited; a tomb; a sepulcher.

Syn. Grave has reference to the hollow made in the earth; * * *"

Webster's New International Dictionary defines "grave" as follows:

"An excavation in the earth as a place of burial; loosely, any place of interment; a tomb; a sepulcher;

2. An excavation; a pit, ditch or trench."

It would appear from the above definitions that the cost of the "grave" would necessarily include the space in a cemetery, as well as the opening and closing of the grave. This was evidently the intention of the legislature in the use of the flexible term "grave." Consequently in answer to your third question, it is my opinion that, separate and apart from the burial expenses, the Division of Aid for the Aged must also pay for the space in a cemetery lot and the expense of opening and closing the grave. As to the cost of the space in the lot and the opening and closing of the same, it is thought that although no maximum limitation is expressly provided, that a reasonable amount is to be inferred, and that the amount is within the discretion of the Division of Aid for the Aged in the absence of any fraud or abuse of discretion.

Summarizing, it is my opinion that:

1. Under the provisions of Section 1359-10, General Code, as amended by House Bill No. 605, enacted in the First Special Session of the 91st General Assembly, effective July 16, 1936, it is mandatory that the Division of Aid for the Aged make burial awards to defray the burial expenses of deceased old age pensioners. If the actual burial

expenses are \$100.00 or less it is mandatory that the Division of Aid for the Aged make payment of such amount to the proper person entitled thereto on the application, under oath, by such person, but in no case may the same award for burial expenses exceed \$100.00.

2. Under the provisions of Section 1359-10, General Code, as amended by House Bill No. 605, enacted in the First Special Session of the 91st General Assembly, effective July 16, 1936, in addition to burial expenses, the Division of Aid for the Aged must pay a reasonable amount, which amount is within their sound discretion, for the grave and the opening and closing of the same, to the proper person entitled thereto.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5654.

APPROVAL—BONDS OF SUGAR CREEK TOWNSHIP, STARK COUNTY, OHIO, \$2,830.00.

COLUMBUS, OHIO, May 29, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5655.

WATER RENTALS—BOARD OF EDUCATION FURNISHED WATER BY MUNICIPALITY—LIABILITY OF BOARD OF EDUCATION FOR SUCH WATER DISCUSSED.

SYLLABUS:

Where assessments of water rentals for water consumed have been made against a board of education by a municipality or the waterworks thereof, located in the Fifth Appellate District comprising the counties of Ashland, Coshocton, Delaware, Fairfield, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark and Tuscarawas, since January 1, 1931, liability of the board of education to the municipality for the payment of said water rents now exists for the full time the assessments were made.