

217.

HONORABLY DISCHARGED SOLDIER—UNDER SECTION 2950, GENERAL CODE, CONTRACT MAY BE MADE BY SOLDIERS' BURIAL COMMITTEE TO DEFRAY FUNERAL EXPENSES—VOTING RESIDENCE—COUNTY COMMISSIONERS.

*SYLLABUS:*

1. *Under the provisions of section 2950, General Code, where an honorably discharged soldier, having at any time served in the army or navy of the United States, dies, not having the means to defray the necessary funeral expenses, a valid contract for his burial may be entered into by the soldiers' burial committee notwithstanding the fact that said soldier had not resided in the township where he died the necessary length of time to establish a voting residence.*

2. *When the committee provided for in said section 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.*

COLUMBUS, OHIO, March 22, 1927.

HON. MERVIN DAY, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR:—I am in receipt of your recent communication requesting my opinion as follows:

"On January 2, 1927, an indigent soldier died in Blue Creek township, Paulding county, Ohio. This soldier formerly lived in Michigan and entered the U. S. army from Michigan, being a member of the 31st Michigan Volunteer Infantry. He had not lived in Ohio nor in said township for a period of a year, but somewhat less than a year and thereby had not established a residence in Ohio as to entitle him to relief from the poor fund.

The soldiers' burial committee of said township appointed by the county commissioners by virtue of section 2950, contracted with the undertaker for the burial of this soldier at a total cost of \$100.00. The undertaker in question lived in a county other than Paulding county and said soldier was taken to some place in Michigan and buried, presumably his former home. The necessary papers showing this have been filed with the county commissioners except that burial report does not show the place of burial other than to state 'Green Lawn Cemetery,' not giving the town or state. As to burial in Michigan this fact I have learned outside of the report on file.

The last sentence of section 2950 reads as follows:

'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.'

QUESTION:

Under the foregoing state of facts is it legal, assuming that the report now on file is so corrected, so as to show burial of said soldier at some place in Michigan, for the county commissioners to allow said bill and order the county auditor to pay the same.

It will be noted that section 2950 does not seem to require a legal residence in Ohio but merely says 'a soldier who dies.' It would seem of course

that the statute contemplates that the soldier must die in the particular township in which the committee acts.

Your opinion is requested in the premises."

Section 2950, General Code, provides 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. 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, General Code, provides for the duties of the committee and requires the committee to use the forms of contracts in the act provided. (Section 2954, General Code.)

Section 2952, General Code, in part 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 person, and make a report thereof to the county commissioners of the county, setting forth \* \* \* an accurate itemized statement of the expenses incurred by reason of such burial."

Section 2955, General Code, in part provides:

"The undertaker shall present his itemized bill and contract to the county auditor, \* \* \* in order to obtain his warrant. \* \* \*"

This act providing for the appointment of the committee also imposed upon it the duty of careful investigation of each case before "they assume the charge and expense of any such burial." The act in question gives the committee full authority in the premises to contract with an undertaker in proper cases. It thereupon imposes upon the committee the duty of determining all of the jurisdictional questions involved leading up to the contract for burial of the soldier.

Your letter states that the committee provided for burial of this soldier at a total cost of one hundred dollars. Your letter also states that the soldier had not lived in your county long enough to have a voting residence. It is my opinion that this is not material for the present inquiry under the provisions of section 2950, General Code.

The purpose of the act is to:

"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. \* \* \*\*

Your letter also states that the burial was made in Michigan. The letter does not state whether or not the proposed place of burial was known by the committee before it entered into the contract. The language of our statute says 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.

It is believed that the burial place is only incidental to the main question and that it is directory in the statute only. The fact remains that this committee, according to your letter, upon due investigation, entered into a contract for the burial of this soldier. It is presumed that all the necessary jurisdictional questions were determined to be present before the contract was entered into.

This department has heretofore been called upon to construe section 2950, General Code. In volume II, Annual Report of the Attorney General 1911-1912, page 1471, it was said:

“The statute certainly is one to be construed liberally in favor of the soldiers.”

Again, in the Opinions of the Attorney General, 1919, volume I, page 495, the second branch of the syllabus reads as follows:

“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.”

Again, in 1921, Opinions of the Attorney General, at page 48, in a case where the burial committee had not taken the necessary preliminary steps and entered into a contract, this department held that this fact was jurisdictional to the consideration of the bill by the county commissioners.

It is therefore my opinion that according to the facts presented in your letter, the bill should be allowed and ordered paid.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

218.

DISAPPROVAL, ABSTRACT OF TITLE, CERTAIN LAND IN HOCKING COUNTY FOR USE OF OHIO AGRICULTURAL EXPERIMENT STATION.

COLUMBUS, OHIO, March 22, 1927.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Wooster, Ohio.*

DEAR SIR:—Pursuant to your request, addressed to my predecessor, I have examined the abstract of title to certain real estate in Hocking county, which the state proposes to purchase for the use of the Ohio Agricultural Experiment Station. This property is described in the caption of the abstract as follows: