

Answering specifically your first question, the answer must be in the negative since there will be no additional levy for the fiscal year for which application for participation is made.

Your second question we answer in the affirmative, since the district will have the additional levy in full force and effect for the fiscal year for which application for participation is made.

Answering your third question, no district is eligible to participate in the fund unless "the property of the given district is to be taxed for the current year for all purposes at a rate within municipal limits of at least twenty mills and at a rate outside of municipal limits of at least seventeen mills." The specific limitation herein provided seems definite and clear.

An examination of the act shows that it was designed to co-ordinate with an act providing for a county equalization fund, which failed to pass, and with the Taft act, which was defeated on referendum. The limitations of 17 and 20 mills, respectively, were undoubtedly obtained by adding the "additional levy", popularly referred to as the "three mill levy", to the maximum limitations prescribed in the Taft act. The intent of the legislature was that no aid from the state fund should be granted until the property of the local district was taxed at the maximum rate provided by law, and the failure of the Taft act is apparently responsible for the condition noted in the last paragraph of your letter. Whatever may be the cause of the condition, it can be remedied by no authority save the general assembly.

Respectfully,

C. C. CRABBE,

Attorney General.

1955.

BURIAL OF INDIGENT SOLDIER—ITEMS UNDERTAKER MUST FURNISH—SECTIONS 2950 AND 2951 G. C. CONSTRUED.

SYLLABUS:

The amendments of section 2950 and 2951 (109 O. L., 211) do not relieve an undertaker with whom the committee referred to in Sections 2950 et seq. may contract from furnishing all of the items specified in the contract, the form and contents of which are prescribed by Section 2954, General Code; and this is true whether or not the contract price is less or more than one hundred dollars.

COLUMBUS, OHIO, November 12, 1924.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen:—

I am in receipt of your communication as follows:

"Section 2954, General Code, sets out in detail the items which an undertaker is required to furnish in connection with the burial of an indigent soldier.

"*QUESTION*: In the event that the undertaker does not furnish all of the items specified in this section, may he receive the full compensation of one hundred dollars from the county treasury?"

"This question seems to be somewhat complicated by the amendment of Sections 2950 and 2951, General Code, in 109 O. L., 211."

Sections 2950 and 2951, General Code, prior to amendment in 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."

These sections were amended in 109 O. L., 211, to 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."

By the original sections the committee could contract with the undertaker in an amount not to exceed one hundred dollars. For this amount the undertaker was to furnish certain items specified in Section 2954, General Code. This section provides as follows:

"The undertaker employed to perform the service hereinbefore described shall use blanks as herein provided, specifying what he is to furnish for such service, sign the contract and leave a copy thereof with the committee with whom he makes his contract, to read as follows:

"I, _____, undertaker, residing at _____, hereby agree to furnish the following items for the burial of _____, who resided at _____, and died _____, 19____, namely: One casket nicely covered with a good quality of black cloth, lined with a good quality of white satin, or other material of good quality and trimmed outside with six handles of a fair quality in keeping with the casket; one burial robe of good quality of material; one plain box for receiving the coffin inside the grave; to pay for digging the grave, in the place designated by the friends of the deceased, or otherwise provided, and fill up the grave in a proper manner, to furnish a respectable hearse for conveying the remains to the place of burial; to prepare the body for burial when so requested; to furnish two carriages of four passenger capacity each for use of the friends, and one carriage of six passenger capacity for the pallbearers, returning the same people to their respective homes or to the place where the funeral services were held. In fact, to furnish a decent, respectable funeral, for the sum of _____ Dollars.

This section was not changed when sections 2950 and 2951 were amended, and section 2951, as amended, provides that "the committee * * shall use the forms of contracts herein prescribed and abide by the regulations herein provided." It further provides that

"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."

Section 2956, General Code of Ohio, provides as follows:

"If a saving of money is effected, by reason of donations of carriages, owning of cemetery lot, or other items mentioned in the bill of expenses, 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, at the discretion of the committee. If it appears that life insurance, or any fraternity funds are coming to the family of the deceased, the committee shall withhold their signatures to the contract until such matters are definitely settled."

The amendment of Section 2950 eliminated the limitation theretofore contained

in that section that the contract was not to exceed in amount one hundred dollars, providing that the committee might not contract with the undertaker "at a cost not to exceed one hundred dollars", and substituted in its place a provision authorizing the committee, with the approval of the family or friends of the deceased, to contract with the undertaker "at a fair and reasonable price."

The amendment of Section 2951 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."

Section 2951, before and after the amendment, provides:

"The committee so appointed shall use the forms of contracts herein prescribed, and abide by the regulations herein provided. * * * Such committee shall see that undertakers furnish all items specified in the contract" **.

Section 2954 not only specifies the form of contract but makes provision for the items requisite to be furnished in order to constitute "a decent, respectable funeral." This section provides that the contract shall "read as follows". Inasmuch as there was no attempt to alter or amend Section 2954 and Section 2951, as amended, requires the committee to see that the undertakers furnish all items specified in the contract, there was apparently no intent on the part of the legislature to exempt the undertaker from furnishing the articles specified in Section 2954, whether the agreement with the committee was for more or less than one hundred dollars.

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.

There appears to be in the amendments no intent to otherwise amend or enlarge the act or relieve the undertaker from any of the requirements theretofore provided. Manifestly Section 2956 can have no application unless the contract price is for less than one hundred dollars.

It is therefore my opinion that whether or not the agreed price be more or less than one hundred dollars and any part thereof not exceeding one hundred dollars is to be paid from the county treasury, the undertaker must sign the agreement provided by Section 2954 and at least furnish the items therein specified and the committee must see to it that all the items specified are so furnished.

Respectfully,

C. C. CRABBE,

Attorney General.