

OPINION NO. 77-056

Syllabus:

If the body of a dead person is not claimed by any person for private interment, the township, city, or village of which the deceased was a resident is responsible for burial expenses if the deceased was a legal resident of the county and was not an inmate of an institution of this state.

To: Anthony L. Gretick, Williams County Pros. Atty., Bryan, Ohio
By: William J. Brown, Attorney General, October 11, 1977

I have before me your request for my opinion which reads as follows:

Which political subdivision, if any, has the responsibility of paying the burial expenses for a deceased indigent resident of a village?

From further information in your letter I understand that your request concerns those indigent residents who do not qualify for burial assistance under R.C. 5101.52, and who have no next of kin willing to pay for private interment.

R.C. 5113.15 provides as follows:

When the body of a dead person is found in a township or municipal corporation, and such person was not an inmate of a penal, reformatory, benevolent, or charitable institution of this state, and such body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with section 1713.34 of the Revised Code, or such person was not eligible for burial assistance under section 5101.52 of the Revised Code, it shall be disposed of as follows:

(A) If such person was a legal resident of the county, the proper officers of the township or municipal corporation in which the body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

(B) If such person had a legal residence in any other county of the state at the time of his death, the

superintendent of the county home of the county in which such body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had legal residence at the time of his death.

(C) If such person was an inmate of a correctional institution of the county or a patient or resident of a benevolent institution of the county, had no legal residence in the state, or his legal residence is unknown, such superintendent shall cause him to be buried at the expense of the county. . .

The issue you present, then, is whether villages are "municipal corporations" for purposes of R.C. 5113.15.

The prior section of the General Code which dealt with burial of indigents was interpreted by the courts and one of my predecessors as only including cities in the term "municipal corporations". See Maham v. Township of Williamsburg, 5 Ohio Supp. 36 (1935), affirmed by the Court of Appeals of the first appellate district in Williamsburg Tp. et al. v. Maham, 4 O.O. 451 (1935); 1936 Op. Att'y Gen. No. 5135.

The interpretation was due to an ambiguity in the terms used in the Chapter of the General Code which provided for poor relief.

The ambiguity under the General Code arose in construing Sections 3476 and 3495 together. Section 3476 used the terms "township", "city", and "such municipal corporation". The Maham court held that the meaning of "municipal corporation" was thus restricted to cities by use of the modifier "such".

Section 3495, however, simply referred to "townships" and "municipal corporation". The Common Pleas Court of Clermont County in the first Maham decision discussed the ambiguity in terms used in Sections 3476 and 3495:

You will also note that the code provides that the legislature refers to the act and not to the section, by the quotation "It is the intent of this act that townships and cities shall furnish relief" etc.

It therefore appears that in Section 3495, while only the terms of municipal corporation and corporation are used, it is the intention of the legislature to confine them to cities; for in as much as the term corporation and municipal corporation is used in the code where the villages have no authority to grant relief to the living, we feel that it is only

fair and proper to interpret this section, to-wit, 3495, to give a like intent to that. . . . It will therefore clearly be shown and must follow that the intention of the legislature, for the reasons above given was to use the term city and municipal corporation interchangeably and that villages are not responsible for the burial of the dead, who are residents of both the village and the township where the limits of the two are not corresponding and interchangeable.

The ambiguity under the General Code arose in construing two sections of the same chapter together where one section, Section 3476, used conflicting terms with reference to municipal corporations. The repeal of Section 3476 removes the ambiguity since R.C. 5113.15 (formerly Section 3495, General Code) has no conflict in terms. Therefore, since there is no ambiguity in the terms contained in R.C. 5113.15, the plain meaning of the statute will control. It is clear that this is the proper approach as I noted in Op. Att'y Gen. No. 73-042:

In Cleveland Trust Co. v. Eaton, 21 Ohio St. 2d 129 (1970), the Supreme Court said (at 138):

As stated in paragraph five of the syllabus of Sears v. Weimer, (1944), 143 Ohio St. 312, 55 N.E. 2d 413, "Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation." See also Slingluff v. Weaver, (1902), 66 Ohio St. 621, 64 N.E. 574.

Therefore, the question you present hinges on whether villages are classified as municipal corporations. R.C. 703.01 deals with this issue and reads, in pertinent part:

Municipal corporations, which, at the last federal census, had a population of five thousand or more, . . . are cities. All other municipal corporations are villages.

It should be noted that R.C. 703.01 is a general provision not expressly limited to Title VII of the Revised Code.

The language of R.C. 703.15 is plain in its use of the term "municipal corporations". Under R.C. 703.01 villages are classified as municipal corporations. I must conclude that R.C. 5113.15 embraces villages in its use of the term "municipal corporations".

Therefore, in specific answer to your question, it is my opinion and you are so advised that pursuant to R.C. 5113.15, if the body of a dead person is not claimed by any person for private interment, the township, city, or village of which the deceased was a resident is responsible for burial expenses if the deceased was a legal resident of the county and was not an inmate of an institution of this state.