

OPINION NO. 92-059**Syllabus:**

1. A committee on the burial of indigent veterans may provide assistance for the burial of a deceased veteran pursuant to R.C. 5901.25-.33 only upon a finding that the family of the deceased veteran lacks the means to defray the expenses of the burial or that payment of such expenses by the family would result in the family's being deprived of means actually necessary for its immediate support.
2. If a need for burial assistance exists, the fact that assistance is also being provided under another governmental program does not preclude a committee on the burial of indigent veterans from granting such assistance pursuant to R.C. 5901.25-.33.

To: David E. Aldstadt, Governor's Office of Veterans' Affairs, Columbus, Ohio

By: Lee Fisher, Attorney General, December 29, 1992

You have requested an opinion concerning the authority of a county veterans service office to provide assistance for the burial of an indigent veteran if the family of the veteran is receiving burial assistance under another governmental program. Your question pertains particularly to instances in which assistance is received from the state, city, or county.

The Authority of a Committee on the Burial of Indigent Veterans to Provide Burial Assistance

R.C. Chapter 5901 authorizes each board of county commissioners to appoint a committee of "two suitable persons in each township and ward in the county, other than those prescribed for the care of paupers and the custody of criminals," to be known as the "committee on the burial of indigent veterans." R.C. 5901.25-.26.¹ The committee is authorized, with the approval of the family or friends of the deceased, to contract, at a fair and reasonable price, with the funeral director selected by the family or friends, for the burial of the body of any veteran, the parent, spouse, or surviving spouse of any veteran, or any army nurse who served in the army of the United States,² "who dies without the means to defray the

¹ This opinion discusses the authority of a committee on the burial of indigent veterans to provide burial assistance. In certain circumstances, however, burial assistance may be provided without the existence of a committee. Pursuant to R.C. 5901.33, if, in any ward or township of a county, the board of county commissioners is unable to induce qualified citizens to accept membership on a veterans burial committee, the board may appoint a person to investigate and ascertain the need and eligibility for burial assistance under R.C. 5901.25-.26. In cases where the written report of the investigator exhibits need and eligibility for relief, the board of county commissioners may approve the relief and allow and order paid the amount of funeral expenses, which may not exceed the amount fixed by R.C. 5901.26. R.C. 5901.33. The analysis contained in this opinion is applicable also to assistance provided pursuant to R.C. 5901.33.

² You have inquired about assistance for the burial of an indigent veteran and this opinion addresses that question; however, the same analysis applies to assistance for the burial of the parent, spouse, or surviving spouse of any veteran, or any army nurse who served in the army of the United States. See R.C. 5901.25.

necessary funeral expenses." R.C. 5901.25. Burial may be made in any cemetery except one that is used exclusively for the burial of paupers and criminals. R.C. 5901.25.

The committee is required to use the forms of contracts provided by statute and to abide by other requirements established by statute. R.C. 5901.26. A contract for burial assistance under R.C. Chapter 5901 provides for a casket, a burial robe, a plain box for receiving the coffin inside the grave, preparing the body for burial when so requested, payment for digging and filling the grave, and furnishing a funeral car and two limousines. R.C. 5901.29. The committee is responsible for seeing that a funeral director who enters into a contract under R.C. 5901.25-.33 furnishes all items specified, and for assuring that, "when the benefits of such sections [R.C. 5901.25-.33] are claimed the entire amount to be contributed by the county toward the cost of such funeral shall not exceed the sum of five hundred dollars, and that any remaining costs are paid by the family or friends of the deceased." R.C. 5901.26. When performance of the contract is complete, the funeral director presents an itemized bill to the county auditor for payment. R.C. 5901.30.

The provisions for burial assistance for veterans are included in R.C. Chapter 5901, which also creates the veterans service commission and authorizes the commission to employ county veterans service officers and to provide various kinds of benefits for veterans. *See generally, e.g.,* R.C. 5901.02, .07, .14-.15. The determination to award burial assistance pursuant to R.C. Chapter 5901 is, however, made by the committee on the burial of indigent veterans, rather than by the veterans service commission. Your letter of request speaks of burial assistance obtained through a county veterans service office and references R.C. 5901.25, thereby indicating that your question pertains to the benefits that may be provided by a committee on the burial of indigent veterans pursuant to R.C. 5901.25-.33. *See note 1, supra.*

No Benefits May Be Provided Under R.C. 5901.25-.33 Unless the Family of the Deceased Is Indigent

No benefits may be granted pursuant to R.C. 5901.25-.33 unless there is a need for the benefits. R.C. 5901.27 provides that, before assuming the charge and expense of any burial, the committee on the burial of indigent veterans must "satisfy itself, beyond a reasonable doubt, by careful inquiry, that the family of the deceased is unable, for want of means, to defray the expenses of the burial, or that the family may be deprived of means actually necessary for its immediate support." The committee's report to the county commissioners must "set forth that the committee found the family of the deceased person in indigent circumstances and unable to pay the expenses of burial." R.C. 5901.27. It is, therefore, clear that a committee on the burial of indigent veterans may provide assistance for the burial of a deceased veteran pursuant to R.C. 5901.25-.33 only upon a finding that the family of the deceased veteran lacks the means to defray the expenses of the burial or that payment of such expenses by the family would result in the family's being deprived of means actually necessary for its immediate support.

Funeral Benefits May Be Granted under R.C. 5901.25-.33 if a Need Exists, Even Though Some Benefits Are Available From Other Sources

The issue of whether funeral benefits may be provided by a veterans burial committee when benefits are also available from the federal government was addressed in 1931 Op. Att'y Gen. No. 3279, vol. II, p. 744, under statutes that closely parallel those currently in existence. 1931 Op. No. 3279 noted the obligation of the committee (then a "soldiers' burial committee") to determine, before it certified any expenditures to the county commissioners, whether funds from any other source were available to pay, in whole or in part, the expenses of burial. The opinion went on to conclude: "It cannot be said as a matter of law that the federal payment of

\$100.00 for the expense of a soldier's burial, precludes a township or ward soldiers' burial committee from defraying expenses in connection with the burial of such soldier." 1931 Op. No. 3279, at 746. Although the provisions discussed in 1931 Op. No. 3279 have been amended since issuance of that opinion, their substantive provisions remain substantially the same. Therefore, a similar conclusion is applicable in response to your question: the receipt of assistance from another governmental source does not necessarily preclude a committee on the burial of indigent veterans from defraying expenses in connection with the burial of a veteran pursuant to the committee's statutory authority. This conclusion is applicable to assistance received from any governmental source, whether federal, state, or local.³

The statutes governing funeral benefits under R.C. Chapter 5901 clearly do not permit a committee on the burial of indigent veterans to pay for goods or services that are being paid for by some other source. R.C. 5901.31 does, however, state:

If a saving of money is effected by reason of the loan of automobiles, ownership of a cemetery lot, or other items mentioned in the bill of expenses under [R.C. 5901.30], 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 shall remain in the general fund of the county, at the discretion of the committee appointed under [R.C. 5901.25]. If it appears that life insurance or any fraternity funds are coming to the family of the deceased, the committee shall withhold its signature to the contract until such matters are definitely settled.

Thus, the committee has discretion to pay to the family of the deceased amounts that are not used for funeral expenses when certain needs are met by other sources. See generally, e.g., 1924 Op. Att'y Gen. No. 1955, vol. I, p. 624.

Burial Assistance May Be Available from Sources Other Than R.C. 5901.25-.33

Ohio law provides that state funds may be used to defray the expenses of burial of certain eligible persons, including some individuals who have received aid under various welfare programs. R.C. 5101.52; 9 Ohio Admin. Code 5101:1-33-012. Such burial assistance from the state may not exceed seven hundred fifty dollars (five hundred dollars for a person under age eleven) and may be granted only to the extent of the difference between the resources of the deceased person and the permissible payment. R.C. 5101.52; 9 Ohio Admin. Code 5101:1-33-01 to -013. R.C. 5101.52 does not permit funeral, cremation, cemetery, and burial expense payments to be made "to the extent that the recipient, at the time of death, had funds available for such purposes," and does not permit payment to be made if the total cost of funeral, cremation, cemetery, and burial expenses exceeds the amount designated by statute. The statute, however, permits "[c]ontributions, allowances, and grants up to a total amount not to exceed the maximum burial assistance payment under [R.C. 5101.52] and grave space" to be furnished by other sources "towards items of cremation, cemetery, outside receptacle, incidental funeral and burial expenses, other than a standard sized casket and professional services of the

³ R.C. 5901.26 provides that costs remaining after the county makes a contribution under R.C. 5901.25-.33 shall be paid "by the family or friends of the deceased." Similar language appeared in G.C. 2951 when 1931 Op. Att'y Gen. No. 3279, vol. II, p. 744, was issued. 1931 Op. No. 3279 thus indicates that the language authorizing funeral costs not met by the county to be paid by family and friends does not preclude the receipt of contributions from governmental sources.

funeral director." R.C. 5105.52. Such contributions shall not be considered as part of the total funeral, cremation, cemetery, and burial expenses of the deceased, and shall not be deducted from the burial award payment. R.C. 5101.52; 9 Ohio Admin. Code 5101:1-33-014; *see also* 9 Ohio Admin. Code 5101:1-33-013. The county department of human services has authority to determine whether to recommend approval or denial of a burial award claim and to forward claims for which approval is recommended to the division of financial management of the Ohio Department of Human Services. 9 Ohio Admin. Code 5101:1-33-041. A burial award claim may be reduced or denied if contributions exceed the maximum allowable state burial award. 9 Ohio Admin. Code 5101:1-33-042.

In addition to the burial assistance program outlined above, there may be other programs or authority under which public money is available to pay for burial and funeral expenses. An exhaustive review of such programs or authority is beyond the scope of this opinion. *See generally, e.g.*, R.C. 5101.521 (certain instances in which the body of a dead person must be buried at the expense of a township, municipal corporation, or county); R.C. 5155.30 (upon request, board of county commissioners shall provide for funeral services over deceased residents of the county home); 9 Ohio Admin. Code 5101:1-33-05. It is, however, clear that, as a general matter, financial assistance for the burial of a deceased veteran may be granted under R.C. 5901.25-.33 whenever there is need, even if some benefits are also provided under another governmental program. In each case, it is prudent for the committee to determine, prior to granting assistance, whether such a grant will reduce the amount available to the family or friends from other sources. *See, e.g.*, 9 Ohio Admin. Code 5101:1-33-013 to -014, -041 to -042.

R.C. 5901.25-.33 Should Be Construed Liberally

R.C. 5901.26 states expressly that, "when the benefits of such sections [R.C. 5901.25-.33] are claimed the entire amount to be contributed by the county toward the cost of such funeral shall not exceed the sum of five hundred dollars." It might be argued from the use of the word "entire" that, if burial assistance from a county source other than R.C. 5901.25-.33 is provided to the family of a deceased veteran, the amount of that assistance must be included in the five hundred dollars that the county may contribute. To the extent that other county moneys may be available for burial assistance, however, the fact that R.C. 5901.26 speaks of the entire amount to be contributed by the county "toward the cost of such funeral" indicates that the five hundred dollar limitation applies to the benefits granted under R.C. 5901.25-.33 for the funeral arranged under R.C. 5901.25-.33. Thus, R.C. 5901.26 does not restrict the amount of benefits that a county may pay, for purposes other than a funeral contract under R.C. 5901.25-.33, when the family of a deceased veteran is in need.

This reading of R.C. 5901.26 is consistent with the established practice of construing statutes for burial benefits for veterans liberally in favor of the veterans. As was stated in 1911-1912 Op. Att'y Gen. No. 485, vol. II, p. 1470 at 1471, with reference to the predecessor sections to R.C. 5901.25-.33: "The statute certainly is one to be construed liberally in favor of the soldiers. It is the last tribute in the way of anything of financial value that the people of a grateful Republic can pay to its heroic defenders..."⁴

⁴ 1911-1912 Op. Att'y Gen. No. 485, vol. II, p. 1470, concluded that the county commissioners could not restrict the expenditures of the committee for each funeral to less than the seventy-five dollars then authorized by statute. 1911-1912 Op. No. 485, at 1471, supported its conclusion with the following language: "when the legislature fixed the maximum at seventy-five dollars prices were much lower than they are now, and this sum seems to be

Conclusion

It is, therefore, my opinion, and you are advised, as follows:

1. A committee on the burial of indigent veterans may provide assistance for the burial of a deceased veteran pursuant to R.C. 5901.25-.33 only upon a finding that the family of the deceased veteran lacks the means to defray the expenses of the burial or that payment of such expenses by the family would result in the family's being deprived of means actually necessary for its immediate support.
2. If a need for burial assistance exists, the fact that assistance is also being provided under another governmental program does not preclude a committee on the burial of indigent veterans from granting such assistance pursuant to R.C. 5901.25-.33.

not only within the field of economy, but pretty well toward the center of boundary of stinginess." The current limit of five hundred dollars became effective in 1987. *See* 1987-1988 Ohio Laws, Part I, 298 (Am. S.B. 109, eff. Oct. 20, 1987).