

OPINION NO. 95-012**Syllabus:**

1. If the body of a dead person is claimed by any person for private interment at the claimant's expense pursuant to R.C. 5101.521, then no political subdivision has any obligation under R.C. 5101.521 to pay any expenses relating to the burial of the person. (1973 Op. Att'y Gen. No. 73-073, approved and followed in part.)
2. If the body of a dead person is claimed as a loved one by an indigent person pursuant to R.C. 5101.521, then a political subdivision is not relieved of any duty it may have to bury the person at the expense of the subdivision in accordance with R.C. 5101.521. (1973 Op. Att'y Gen. No. 73-073, modified in part on the basis of legislative change.)
3. Whether a particular individual is claiming the body of a dead person "for private interment at his own expense" pursuant to R.C. 5101.521 or is an indigent person simply claiming the body of as that of a loved one,

without the intent or ability to pay for private interment, is a question of fact.

4. R.C. 5101.521 permits a political subdivision to cooperate with an indigent person who claims the body of a loved one by causing the decedent to be buried at the expense of the political subdivision in a manner that, to the extent reasonably possible within appropriate financial limitations, is consistent with the preferences and sensibilities of the claimant.
5. R.C. 5101.521 does not authorize an indigent person to claim a body, make independent arrangements for a private funeral, and have the bill sent to the political subdivision, nor does it require a political subdivision to pay a bill submitted in such circumstances.

To: Greg Carroll, Adams County Prosecuting Attorney, West Union, Ohio
By: Betty D. Montgomery, Attorney General, June 22, 1995

You have requested an opinion regarding the responsibility of a political subdivision for the burial expenses of an indigent person when the family of the decedent has planned and arranged the funeral. Your letter indicates that there have been several instances in which a local funeral home has submitted bills for its services to a township, even though the township trustees had no role whatever in making the arrangements for the burial of the decedent. Your questions concern the meaning of the terms "claimed by an indigent person" and "claimed by any person for private interment at his own expense," as they are used in R.C. 5101.521.

R.C. 5101.521

R.C. 5101.521 provides for the burial of an indigent person at the expense of a political subdivision in certain circumstances, 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 correctional, benevolent, or charitable institution of this state, and the 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 the person was not eligible for burial assistance under section 5101.52 of the Revised Code, it shall be disposed of as follows:

(A) If the person was a legal resident of the county, the proper officers of the township or municipal corporation in which his 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 the 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 a legal residence at the time of his death.

(C) If the 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, *the superintendent shall cause him to be buried at the expense of the county.*

Such officials shall provide, at the grave of such person, a stone or concrete marker on which his name and age, if known, and the date of his death shall be inscribed.

A political subdivision is not relieved of its duty to bury a person at its expense under this section when the body is claimed by an indigent person.

R.C. 5101.521 (emphasis added). The proper officials of a township, municipal corporation, or county are required to cause a dead body to be buried at the expense of the political subdivision in a situation described in R.C. 5101.521. Such a situation can exist only if "the body is not claimed by any person for private interment at his own expense." R.C. 5101.521.

Claiming a Body for Private Interment at the Expense of the Claimant

In order to apply R.C. 5101.521, it is necessary to determine when a body is claimed for private interment at the expense of the claimant. This question was considered in 1973 Op. Att'y Gen. No. 73-073, under an earlier version of the statute then appearing in R.C. 5113.15. Op. No. 73-073 considered the responsibility of a board of township trustees to pay the burial expenses of a deceased township resident when the indigent family of the decedent made the funeral arrangements with a local funeral home, and concluded that the board of township trustees was not responsible for those burial expenses. Op. No. 73-073 set forth the following rationale for its conclusion:

[The] question, as I understand it, goes to the meaning of "claimed by any person for private interment at his own expense" (R.C. 5113.15). Does this phrase cover all situations in which the body is claimed by a person for private burial, or only those in which that person intends to pay for the funeral? In other words, may a relative or friend of the deceased claim the body, arrange for the funeral with a commercial undertaker, and then have the bill sent to the township?

I do not believe that this practice is authorized, even if all the other requirements of R.C. 5113.15 are met. It is well settled that townships, like counties, have only those powers which are expressly delegated to them by statute, or necessarily implied by those expressly delegated. Moreover, grants of authority to expend public funds must be strictly construed, and ambiguities resolved against such authority. State ex rel. v. Pierce, 96 Ohio St. 44 (1917).

Even without these rules, the answer to your question appears in the terms of the statute. In cases where the Section imposes a duty on the township, the body "shall be disposed of as follows: * * * the proper officers of the township * * * shall cause it to be buried at the expense of the township * * *," or "the superintendent of the county home * * * shall cause it to be buried at the expense of the township * * *." It is difficult to conceive how these officials could dispose of the body, or cause it to be buried, if a person had claimed the body and made arrangements for a private funeral. To construe the statutory language to authorize payment for such a funeral, even though the officials did not cause the body to be buried, would stretch that language unjustifiably.

Moreover, if the Legislature had intended to authorize reimbursement to the person claiming the body, it could easily have said so. It could have specified a procedure and a maximum limit on the cost the township, municipal corporation, or county would bear. But these specifics are absent in the statute, as is any mention of such reimbursement to a private person.

Finally, I note that the apparent purpose of R.C. 5113.15 is to provide for the burial of indigents who would not otherwise be buried, for reasons of public health and sensibilities. If the body of an indigent is claimed by relatives or friends, who arrange for the funeral according to their wishes, the situation is removed from the statutory object, and therefore, logically, from its coverage. See R.C. 1.49(A). To construe the Section to authorize reimbursement in such a case would do nothing to accomplish the object of the statute.

Op. No. 73-073 at 2-269 to 2-270. Op. No. 73-073 concluded generally that the statute in question "does not authorize a board of township trustees to pay for the burial of an indigent when the body is claimed by any person for private interment." Op. No. 73-073 at 2-268 (syllabus).

Following the issuance of Op. No. 73-073, the General Assembly reconsidered the issue of public assistance for burial expenses. As part of legislation that expanded the availability and increased the amounts of state burial assistance under R.C. 5101.52, the General Assembly amended R.C. 5113.15 to provide that R.C. 5113.15 did not apply if the decedent was eligible for burial assistance under R.C. 5101.52 and to state, in the final paragraph: "A political subdivision is not relieved of its duty to bury a person at its expense under this section when the body is claimed by an indigent person." 1975-1976 Ohio Laws, Part I, 710, 712 (Am. S.B. 293, eff. Dec. 2, 1975). To answer your question it is necessary to determine the meaning of this language and the extent to which it affects the analysis and conclusion of Op. No. 73-073.¹

Duty of a Township When a Body is Claimed by an Indigent Person

¹ Language similar to that in 1973 Op. Att'y Gen. No. 73-073 appears in the syllabus of 1977 Op. Att'y Gen. No. 77-056, as follows:

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.

Op. No. 77-056 at 2-201 (syllabus). The issue considered in Op. No. 77-056 was whether villages as well as cities were municipal corporations for purposes of R.C. 5113.15, predecessor to R.C. 5101.521. Op. No. 77-056 by its terms concerned situations in which there was "no next of kin willing to pay for private interment." Op. No. 77-056 at 2-201. Op. No. 77-056 thus addressed situations in which the body of a dead person was not claimed by any person for private interment at the claimant's expense; however, it did not consider any issues involving the indigency of the claimant.

The language adopted by Am. S.B. 293 that now appears in the final paragraph of R.C. 5101.521 states simply that a political subdivision "is not relieved of its duty to bury a person at its expense under [R.C. 5101.521] when the body is claimed by an indigent person." The statute does not expressly provide for reimbursement of expenses incurred by a private person; instead, it confirms the duty of the political subdivision "to bury a person at its expense." The statute does not specify the meaning of the term "claimed by an indigent person."

The opening paragraph of R.C. 5101.521 excludes from the provisions of R.C. 5101.521 a body that is "claimed by any person for private interment at his own expense." The final paragraph specifies that there is no exclusion from provisions for burial at the expense of the political subdivision "when the body is claimed by an indigent person." It is clear that the word "claimed" is used in different senses in those sentences. According to the first sentence, a body may be claimed by any person who wishes to arrange and pay for private interment. Once a body is so claimed, no public official any longer has a duty to cause the body to be buried at public expense. According to the later sentence, a body may be claimed by an indigent person. In such circumstances, the body clearly is not claimed for private interment *at the expense of the person claiming the body*, since that person is unable to bear such expense. It appears, instead, that the indigent person may claim the body simply as that of a loved one, without undertaking to arrange and pay for private interment. When an indigent person claims the body of a loved one in that manner, the political subdivision "is not relieved of its duty to bury" the person at the expense of the subdivision. R.C. 5101.521. As discussed in Op. No. 73-073, the duty of public officials to bury a body under R.C. 5101.521 is the duty to dispose of it or to cause it to be buried. Thus, the public officials are given the responsibility of causing the body to be buried and are not authorized simply to pay whatever charges a private individual might incur in independently arranging the burial.

Whether a particular individual is claiming the body of a dead person "for private interment at his own expense" or is an indigent person simply claiming the body as that of a loved one, without the intent or ability to pay for private interment, is a question of fact that must be determined in light of specific circumstances. *See, e.g.*, 1993 Op. Att'y Gen. No. 93-009 at 2-47 ("indigence must be considered and measured in each case by reference to an individual's financial condition").² If an indigent person claims the body of a loved one but is

² Standards for determining indigency have been discussed in various contexts. A county veterans service commission is authorized to incur up to one thousand dollars in burial expenses, *see* R.C. 5901.26, for a veteran, or the parent, spouse, or surviving spouse of a veteran, "who dies without the means to defray the necessary funeral expenses." R.C. 5901.25. The standard for establishing that a family is in indigent circumstances for purposes of this provision is 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." R.C. 5901.27; *see also* 1992 Op. Att'y Gen. No. 92-059. Factors to be considered in making a determination of indigency were discussed in 1990 Op. Att'y Gen. No. 90-088, in connection with statutory provisions that excuse an indigent person from paying a mandatory fine. Op. No. 90-088 concluded:

1. For purposes of R.C. 2925.03(L), the term "indigent" encompasses individuals who are poor, needy, destitute, or in poverty.

unable to arrange for private interment at his own expense, the appropriate political subdivision retains responsibility for causing the body to be buried at public expense. The final sentence of R.C. 5101.521 permits a political subdivision to cooperate with an indigent person who claims the body of a loved one by causing the decedent to be buried at the expense of the political subdivision in a manner that, to the extent reasonably possible within appropriate financial limitations, is consistent with the preferences and sensibilities of the claimant. The provisions of R.C. 5101.521, however, do not authorize an indigent person to claim a body, make independent arrangements for a private funeral, and have the bill sent to the political subdivision, nor do they require a political subdivision to pay a bill submitted in such circumstances.

The conclusion that R.C. 5101.521 does not permit an indigent person to arrange a private funeral and simply bill the township for whatever expenses are incurred is supported by the fact that other statutory provisions governing public assistance for burial expenses contain clear procedural restrictions and financial limitations. For example, burial funds are available from the Ohio Department of Human Services pursuant to R.C. 5101.52 "only to the extent of the difference between the resources of the deceased person, in real and personal property and insurance," and the sum of seven hundred fifty dollars for a person age eleven or older or five hundred dollars for a person under age eleven. Approval of the Department is required, and no payment is permitted if total costs exceed the specified amounts. R.C. 5101.52; *see also* 12 Ohio Admin. Code 5101:1-33-01 to -013; 1992 Op. Att'y Gen. No. 92-059. Similarly, a veterans service commission may contribute no more than one thousand dollars toward the cost of a burial, and a detailed procedure is established for procuring payment. R.C. 5901.25-.32. R.C. 5101.521 contains no similar monetary or procedural restrictions, and it would be unreasonable to construe R.C. 5101.521 as permitting an indigent person to incur unlimited burial expenses on behalf of a political subdivision. *See* Op. No. 73-073.

Conclusion

For the reasons discussed above, it is my opinion, and you are advised:

1. If the body of a dead person is claimed by any person for private interment at the claimant's expense pursuant to R.C. 5101.521, then no political subdivision has any obligation under R.C. 5101.521 to pay any expenses relating to the burial of the person. (1973 Op. Att'y Gen. No. 73-073, approved and followed in part.)

2. The criteria for determining, under R.C. 2925.03(L), whether an individual is indigent, include the ready availability of real or personal property owned; employment benefits; pensions; annuities; social security; unemployment compensation; inheritances; number and age of dependents; outstanding debts, obligations and liabilities; and any other relevant considerations concerning the financial condition of an individual.

Op. No. 90-088 at 2-375 (syllabus). The criteria discussed in Op. No. 90-088 may be relevant to a determination of indigency under R.C. 5101.521.

2. If the body of a dead person is claimed as a loved one by an indigent person pursuant to R.C. 5101.521, then a political subdivision is not relieved of any duty it may have to bury the person at the expense of the subdivision in accordance with R.C. 5101.521. (1973 Op. Att'y Gen. No. 73-073, modified in part on the basis of legislative change.)
3. Whether a particular individual is claiming the body of a dead person "for private interment at his own expense" pursuant to R.C. 5101.521 or is an indigent person simply claiming the body of as that of a loved one, without the intent or ability to pay for private interment, is a question of fact.
4. R.C. 5101.521 permits a political subdivision to cooperate with an indigent person who claims the body of a loved one by causing the decedent to be buried at the expense of the political subdivision in a manner that, to the extent reasonably possible within appropriate financial limitations, is consistent with the preferences and sensibilities of the claimant.
5. R.C. 5101.521 does not authorize an indigent person to claim a body, make independent arrangements for a private funeral, and have the bill sent to the political subdivision, nor does it require a political subdivision to pay a bill submitted in such circumstances.