

**Opinion No. 60**

**STATE HOSPITAL; Patients; support and maintenance includes burial expense—SOLDIERS; Veterans Burial; expense paid by county, when—INSANE PERSONS, Estates liable for burial expenses—  
Sections 38-214, R.C.M., 1947—71-120, R.C.M., 1947—  
Chapter 76, Laws of 1943—Chapter 49, Laws of 1955—  
Chapter 131, Laws of 1959**

- Held:**
- 1. Relatives of an inmate of the State Hospital who have been liable for the inmate's support and maintenance are also liable for the inmate's burial expense.**
  - 2. The burial expense of an inmate of the Montana State Hospital, who is an honorably discharged veteran of the armed forces of the United States, must be paid by the county in which the veteran resided at the time of his commitment by the method and in the amount prescribed by statute.**
  - 3. The State of Montana must pay the burial expense of indigent inmates of the State Hospital.**

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April 14, 1960

Mr. John L. McKeon  
Special Assistant Attorney General  
Daly Bank Building  
Anaconda, Montana

Dear Mr. McKeon:

You have requested my opinion on the following questions:

1. Are the relatives of an inmate of the Montana State Hospital liable for his burial expense?
2. Is the committing county, or the county of residence, liable for the burial expenses of an indigent inmate of the Montana State Hospital?

Attorney General Gullickson, in an opinion appearing in Volume 19, page 778, of the Reports and Official Opinions of the Attorney General, held that a husband was not liable for the support and maintenance of his wife while she was an inmate of the Montana State

Hospital. The Legislature subsequently amended Section 38-214, R.C.M., 1947, by enacting Chapter 76, Laws of 1943; Chapter 49, Laws of 1955; and Chapter 131, Laws of 1959. These amendments clearly indicate the legislative intent to make the relatives of inmates liable for their support and maintenance. Section 38-214, R.C.M., 1947, provides in part:

"(3) . . . If it appears to the court that such person has no means, money or property, or not sufficient means, money or property, to pay the costs . . . his maintenance therein, but has relatives who are legally liable for his maintenance and support, . . . who are financially able to pay such costs . . . or a part thereof, it shall be the duty of the court to make an order to that effect, stating therein the names of such relatives, and requiring them to pay such costs . . . or so much thereof as may be fixed in such order;"

When the statutory procedure has been adhered to, and a court of competent jurisdiction has determined, either at the time of commitment or during the subsequent confinement, that the relatives of an inmate of the Montana State Hospital are legally liable for the support and maintenance of such inmate, the question for determination actually is whether burial expenses are included within the meaning of "support and maintenance."

The majority of courts which have considered this question have concluded that "support and maintenance" includes all necessities, and that the burial expense is a necessary. In the case of *People ex rel. Bergan v. New York Cent. R. Co.*, (1946) 392 Ill. 525, 64 N.E. (2d) 895, 901, the court said:

"To 'support' according to Webster is 'to maintain'; . . . 'to keep up'; 'to supply what is needed.' It cannot reasonably be said that support and maintenance do not include food, clothing, and also, medical care, since proper medical treatment for the sick is deemed as necessary as the providing of food for the hungry; and, in our opinion, the support and maintenance which the statute authorizes the county to provide for the paupers at the county poorhouse includes also the burial of those whose deaths occur while there. Burial is one of the necessities which civilization requires for a deceased pauper. It is the final and necessary step to be taken in carrying out the objective of the statute."

Also see: *Matter of James J. Morizzo*, (1956), 335 Mass. 251, 139 N.E. (2d) 719, 720; *Phillips v. Home Undertakers et al.* (1943) 192 Okl. 597, 138 Pac. (2d) 550, 551; *McKnight v. McKnight et al.* (1920), 212 Mich. 318, 180 N.W. 437, 442.

Your second question is concerned with the financial responsibility of the county of commitment, or county of residence, to pay the burial expense of indigent inmates of the Montana State Hospital. If the deceased inmate was an honorably discharged veteran from any

branch of the armed forces of the United States his burial expense must be paid by the county that the inmate resided in, at the time of his entry into the Montana State Hospital. Section 71-120, R.C.M., 1947 provides in part:

"It shall be the **duty** of the board of commissioners of each county in this state to designate some proper person in the county, . . . whose duty it shall be to cause to be decently interred the body of any honorably discharged person, . . . who shall have served in any branch of the armed services of the United States and who may hereafter die. Such **burial shall not be made** in any burial grounds or cemetery . . . used exclusively for the burial of pauper dead; . . .

"Whenever any such honorably discharged person, . . . shall die at any public institution of the state of Montana . . . and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state institution, . . . **shall** provide the proper burial herein prescribed except that the expense of each burial shall not exceed the sum herein allowed, which expense **shall be paid** by the county in which the decedent resided at the time of entry into such institution, . . ." (Emphasis added.)

The statute is self explanatory and provides that deceased veterans of the armed services of the United States shall be buried at the county's expense in a cemetery which is not exclusively used for the burial of the pauper dead. The cost of such interment must not exceed the statutory amount and the interment may be made in a county other than the county of residence of the deceased veteran.

The expense of burial of a deceased indigent, non-veteran, patient of the Montana State Hospital must be paid by the state. The State is charged with providing the support and maintenance of such inmates, and burial expenses are a part of such maintenance.

After a court of competent jurisdiction has determined that an inmate of the Montana State Hospital, or his relatives, are liable for his maintenance, then such persons are liable for the burial expense of that inmate. *State of Montana v. William Byrne*, *Guardian* (1960), 17 *State Reporter* 145.

Therefore, it is my opinion that when a court of competent jurisdiction has determined either at the time of commitment or during the subsequent confinement, that the estate or relatives of an inmate of the Montana State hospital are liable for such inmate's support and maintenance, then such persons are liable for the burial expense of that inmate.

It is further my opinion that the county in which the inmate of the Montana State Hospital resided before his confinement, is liable for

that inmate's burial expense if the inmate was an honorably discharged veteran of the armed forces of the United States.

It is further my opinion that the State of Montana is liable for the burial expenses of indigent inmates of the Montana State Hospital.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General