

Opinion No. 70-44

April 28, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Patricio S. Sanchez Assistant District Attorney Sixth Judicial District P.O. Box 1025
Silver City, New Mexico 88061

QUESTIONS

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Where an indigent dies and his body is taken to his church for final rites, at the church's expense, and later returned to a mortician for burial, is the Board of County Commissioners required to pay the amount of \$ 100.00 for burial expenses specified under the Indigent Burial Law?

CONCLUSION

Yes.

OPINION

{*76} ANALYSIS

The Board of County Commissioners is under a duty to bury indigents. Section 13-2-4, N.M.S.A., 1953 Compilation. Section 13-2-6, N.M.S.A., 1953 Compilation, provides that the Board of County Commissioners shall pay expenses for burial of an indigent in an amount of \$ 100.00 for the burial of an adult or a minor over the age of six years and of an amount of \$ 75.00 for the burial of a minor up to the age of six years. This statute is phrased in the mandatory "shall," indicating the absolute duty of the commissioners in this respect. Section 1-2-2(I), N.M.S.A., 1953 Compilation (1969 P.S.).

There is nothing in the Indigent Burial Act, Sections 13-2-4 to 13-2-11, {*77} N.M.S.A., 1953 Compilation, to indicate that this duty of the County Commissioners ceases once an indigent is taken to his church for final rites. On the contrary, the Commissioners are under a duty to pay the amount of \$ 100.00 for the burial of an indigent regardless of the particular circumstances prior to the indigent's burial.

By: James C. Compton, Jr.

Assistant Attorney General