

Opinion No. 43-4389

October 7, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico

We have your request for an opinion of September 24, 1943, concerning when the cost of burial should be paid from the indigent fund of the county, or when such amounts should be paid by the public Welfare Department.

I call your attention to Section 73-206 of the New Mexico 1941 Compilation (Laws of 1939, Chapter 224, Sec. 3) which provides:

"The expense for the burial of an indigent person shall be paid by the county out of the general fund, and not more than thirty-five dollars (\$ 35.00) shall be expended for the burial of any adult and not more than twenty-five dollars (\$ 25.00) shall be expended for the burial of any minor up to the age of six (6) years."

I also call your attention to Sections 73-204, 73-205 of the New Mexico 1941 Compilation.

Section 73-121 of the New Mexico 1941 Compilation provides that on the death of the recipient, that funeral expenses may be paid by the State Department of Public Welfare.

The fact situation which you set out in your letter states that the child of a beneficiary of the Public Welfare Department has died. Under this specific fact situation, it is clear that the child was not a recipient, and that under the present statutes the Public Welfare Department could not pay the funeral expenses. I further point out, however, in order to clarify this general situation, that even upon the death of a recipient, funeral expenses not exceeding \$ 50.00 may be paid by the Public Welfare Department, subject, however, to the rules and regulations of the State Department.

This section is not mandatory upon the Department of Public Welfare under any circumstances, and such amounts are paid only pursuant to regulations that the Public Welfare Department may have enacted or may enact in the future.

The Public Welfare Act was passed in 1937, and therefore the later Legislative enactment of 1939 would govern if there should be any conflict between these provisions. It is, however, sufficient to say that it is the duty of the Board of County Commissioners to provide that indigents shall be decently interred, while the Public Welfare Department **may**, pursuant to rules and regulations, provide burial expenses for recipients of Public Welfare funds.

Hoping that the above fully answers your questions, I am

By HARRY L. BIGBEE,
Assistant Attorney General