

1952 O. A. G.

OFFICIAL OPINION NO. 9

January 28, 1952.

Mr. George H. Herrmann
Secretary-Treasurer
State Board of Embalmers and
Funeral Directors
1505 South East Street
Indianapolis 25, Indiana

Dear Sir:

Your letter of January 17, 1952, has been received requesting an official opinion on the following question:

“The specific matter upon which we desire an official opinion is whether an allowance for the burial of a veteran will be made by county authorities as directed by the State Law, Chapter 109 of the Acts of 1951 by the 87th General Assembly, when such veteran was a resident of the State of Indiana and temporarily resided on a military establishment located anywhere in the State of Indiana.”

The foregoing statute requires such allowance to such persons qualifying therefor under its provisions “upon claim being filed by an interested person with the Board of Commissioners of the county of the residence of such deceased person.”

In an official opinion of this office, same being 1948 Indiana O.A.G., page 411, official opinion No. 66, which concerned the status of persons employed by the Federal Government in the Federal Penitentiary in Vigo County, Indiana and which employees resided on the Federal Penitentiary reservation, this office considered the right of such persons to have their children educated in the common schools of the State of Indiana.

On pages 414 and 415 of said opinion, it was held:

“Also, supporting the foregoing see 1943 Ind. O.A.G., page 37, 1943 Ind. O.A.G., page 259 and 1944 Ind. O.A.G., 142. In the latter opinion at page 148, it is held that where the provisions of the Indiana statutes have been followed by the United States government for the

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purpose of acquiring complete jurisdiction over the area in question, by filing of the required plats of the land with the Governor of the State of Indiana, that 'Under such circumstances persons residing within said area * * * are for all purposes considered as non-residents of the state.' Among other cases there cited on this question are: *United States v. Unzeuta* (1930), 251 U. S. 138; *Collins v. Yosemite Park & Curry Co.* (1938), 304 U. S. 518; *Adams v. United States* (1943), 319 U. S. 312; and *Walter D. Johnson et al. v. Yellow Cab Transit Co.* (1944), 321 U. S. 363.

"An examination of the records in the office of the Governor of Indiana reveals that on February 22, 1940, the United States government having title to the land in question filed a plat thereof in the office of the Governor of Indiana for an area of 1128.84 acres. By this action this area was ceded by the State of Indiana to the Federal Government and is no longer a part of the State of Indiana so far as residence and citizenship is concerned. It is subject to the jurisdiction of the State of Indiana only for those purposes for which valid exception in the State statute has been made."

On page 420 of said opinion, it was further stated:

"Each of the foregoing answers is based upon the assumption that these people have acquired a legal residence in the area now comprising the Federal Penitentiary, at Terre Haute, Indiana, and the Vigo Ordinance Plant and that they are not temporarily living there with a legal residence at some other place. If their legal residence is in some other place in this State the ordinary laws regarding transfers of pupils would control."

Under the authority of the foregoing opinion, I am of the opinion that a deceased veteran who otherwise meets the requirements for allowance toward burial under the provisions of Chapter 109 of the Acts of 1951 and who, at the time of his death, was temporarily residing on a military establishment located on land fully ceded to the United States Government, but was also a legal resident of some county in the State of

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Indiana, would be entitled to such burial allowance upon a claim properly filed with the county authorities of the county in which he maintained such permanent residence.

OFFICIAL OPINION NO. 10

January 29, 1952.

Honorable Frank J. Viehmann
Insurance Commissioner of State of Indiana
State House
Indianapolis, Indiana

Dear Sir:

I have before me your request for an official opinion concerning contracts offered for sale purporting to be membership contracts in an automobile club. You ask "whether or not the services and indemnification or reimbursement offered constitute the making of insurance or an insurance contract."

As set out in your letter, a contract does not take the form of a policy contract. As stated by you, the papers constituting the contract are in the form of a brochure, a membership card and a letter sent by the club to each purchaser, copies of which are all set out in your letter. It is impractical to embody in this opinion copies of such papers.

The papers and the method followed are quite informal, general and indefinite. The arrangement contemplated, however, would seem to constitute a contract between the club and the member. Upon making a down payment and agreeing to pay the balance at designated times, the purchaser becomes a member of the club and entitled to receive certain "service and protection."

This service and protection includes reimbursement for "emergency mechanical aid and tire change," reimbursement for "tow-in service," reimbursement for "accident expense aid," and reimbursement for "defending property damage claims."

In section 3 of chapter 162, Acts of 1935 (Burns' Indiana Statutes Annotated, section 39-3203), insurance is defined as follows: