

1971 O. A. G.

OFFICIAL OPINION NO. 34

December 6, 1971

Mr. William R. Sterrett, Administrator  
State Department of Public Welfare  
701 State Office Building  
Indianapolis, Indiana 46204

Dear Mr. Sterrett:

This is in response to your request for my Official Opinion on the proper interpretation of 1971 Public Law 165. Your specific question is:

“Can the amount of \$350.00 which is provided by friends or relatives of deceased welfare recipients or from other sources be applied only to the amount payable to funeral directors or may it be applied to cemetery expenses as well?”

ANALYSIS

Public Law 165 amends Acts of 1936 (Spec. Sess.), Ch. 3, as found in Burns' (1971 Supp.), Section 52-1209, *et seq.*, IC 1971 12-1-5-11, 12-1-6-11, 12-1-7-13, and 12-1-7-39. These sections provide for the payment of burial expenses for recipients of old age assistance, blind assistance, dependent child assistance and disabled person assistance, respectively. The Act has an emergency clause which makes its provisions effective July 1, 1971.

Section 1 of the Act provides:

“Upon the death of any recipient who is receiving assistance as an aged person, designated as such in IC 1971, 12-1-1 through 12-1-12, such recipient shall be eligible for and there shall be paid the sum of two hundred fifty dollars (\$250.00) for the funeral director's expenses of the decedent, subject to the rules and regulations of the state department \* \* \*

“Whether or not the deceased or the persons legally responsible for the deceased, possesses or possess a burial plot, a sum not to exceed one hundred fifty

## OPINION 34

dollars (\$150.00) shall be paid for the cemetery's expenses for the deceased to cover provision of burial rights (if necessary), opening and closing of a burial plot and provision of an outer container and service of the same as required by the cemetery authorities, which shall be paid in addition to the two hundred fifty dollars (\$250.00) hereinbefore provided for the county department. *That in determining the amounts to be paid the funeral director for expenses under the provisions of this section, there shall be eliminated from consideration or deduction any amount not exceeding a combined total of three hundred fifty dollars (\$350.00) contributed or provided by friends, relatives or from the resources of the deceased \* \* \** (My emphasis)

Sections 2, 3, and 4 make identical provisions for deceased blind assistance recipients, dependent child recipients (or either eligible parent) and disabled person assistance.

The former statutes provided that \$250.00 was allowable to be paid as funeral expenses, \$100.00 for a cemetery plot or cemetery expenses and

“That in determining the amounts to be paid under the provisions of this section, there shall be eliminated from consideration or deduction any amount not exceeding a combined total of two hundred and fifty dollars [\$250.00] contributed or provided by friends, relatives or from the resources of the deceased.”

The net effect of the Act is to increase the amount from other sources allowable from \$250.00 to \$350.00.

Statutes are to be interpreted by taking words in their plain or ordinary and usual sense. Burns' 1-201. However, it is well settled that the intent of the Legislature must be ascertained from the Act itself and such intentions take precedence over the literal meaning of the words used. *Cyrus v. State* (1924), 195 Ind. 346, 145 N.E. 497; *Ex parte Clifford* (1867), 29 Ind. 106.

Cemetery expenses are often paid by the funeral director and then payment for the total service is made directly to

him. In such an event, the difference between funeral expenses and cemetery expenses would be of no consequence in interpreting this statutory scheme. There is no Legislative intention to require that the amounts contributed by family, friends or other resources be applied solely to the funeral director's services *per se*.

In *Marks v. State* (1942), 220 Ind. 9, 18, 40 N.E.(2d) 108, 111, the Indiana Supreme Court said:

“It is presumed that the Legislature does not intend an absurdity, and such a result will be avoided if the terms of the act admit of it by a reasonable construction; an ‘absurdity’ meaning anything which is so irrational, un-natural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence or discretion.”

#### CONCLUSION

It is, therefore, my official opinion that the figure of \$350.00 that may be received from friends, relatives, and other resources of a deceased public assistance recipient dying on or after July 1, 1971, does not have to be considered in determining the amount paid by the county department of public welfare for funeral expenses and for burial expense allowance.