

1961 O. A. G.

*to filing the certificate from the number of shares authorized by the certificate of increase * * *.*" (Our emphasis)

In summary and conclusion, it is my opinion that the fee charged foreign corporations for increasing the number of shares of capital stock represented in this state is to be computed on the numerical difference between shares shown by the last two annual reports, irrespective of the number of shares on which a fee was paid when the corporation was first admitted to do business in this state and irrespective of the fact that such increase may be due wholly to splitting shares on which a former fee was paid.

OFFICIAL OPINION NO. 9

March 23, 1961

Mr. Eugene E. Stegall
Secretary-Treasurer
State Board of Embalmers and Funeral Directors
Box 81
Richmond, Indiana

Dear Mr. Stegall:

Your letter of February 10, 1961, has been received and reads as follows:

"This Board respectfully requests an Official Opinion regarding the following question:

"Indiana Statutes provide for the disposition of the remains of a deceased person to the Anatomical Board if the remains are not claimed by any relative or legal representative within a reasonable length of time, if the deceased person was supported at public expense or was in that class commonly known as tramps.

"What disposition should be made and what person or agency should direct the disposition of the unclaimed remains of a deceased person when funds are available in the name of the deceased person which could be used for disposition of the remains and the deceased person was self-supported?"

OPINION 9

The pertinent section of the statute referred to is Acts of 1903, Ch. 31, Sec. 2, as found in Burns' (1951 Repl.), Section 63-602, which reads as follows:

“It shall be the duty of every public officer, agent and servant, and every officer, agent and servant of any and every county, township, city, town, village or other municipality [municipality], and of any and every almshouse, poorhouse, prison, morgue, hospital, asylum, jail, lockup, stationhouse, workhouse or other public institution and of any and every charitable or benevolent institution supported in whole or in part at public expense, having in his or their possession, charge or control, the dead body of any person not claimed by any relatives or legal representative, as hereinafter provided, and which may be required to be buried at public expense or the expense of any one of such public institutions excepting only the dead bodies of such persons as shall have died with smallpox, diphtheria or scarlet fever, and they are hereby required to notify said anatomical board or such person as may be designated by the said board or its duly authorized officer or agent whenever any such body or bodies come to his or their possession, charge or control for burial at public expense, or the expense of any one of such institutions. And every such officer, agent and servant shall, upon application by said anatomical board or its agent, without fee or reward, deliver such body to said board and permit said board and its agents and the schools and colleges, physicians and surgeons from time to time designated by them who may comply with the provisions of this act, to take and remove the same. The notice aforesaid shall be given in writing and forwarded to said anatomical board within twenty-four [24] hours after said officer, agent or servant comes into possession, charge or control of such body for burial, and shall include such material information as said anatomical board may designate. But no such body shall be delivered if within the time specified above and before actual delivery any person claiming to be and satisfying the officer in charge of such body that he is a relative to the deceased,

or a duly authorized representative thereof, shall claim the said body for burial, but it shall be surrendered for interment, or if the deceased person was a traveler who died suddenly, except such traveler belong to that class commonly known as Tramps, the said body shall be buried.”

The above section of the statute was the subject of an Official Opinion of this office, being 1946 O. A. G., page 319, No. 82, which primarily concerned the disposition or burial of a body of a person dying in one of the state mental hospitals. It is not considered advisable to include here quotations from said Opinion, for to do so would unduly extend this Opinion; however, your attention is respectfully directed to the same for cases solely within that classification. The foregoing Opinion refers to two earlier Official Opinions, being 1934 O. A. G., page 110 and 1940 O. A. G., page 155, holding that under the provisions of the Poor Relief Act, Acts of 1935, Ch. 116, Sec. 3, as found in Burns' (1945 Supp.), Section 52-146, it is made the duty of the township trustee to bury the poor and indigent of such township, including persons dying in a state institution but having legal settlement in such townships. The conditions under which such laws apply are fully explained in the 1946 Official Opinion.

A consideration of the requirements of the foregoing statute, as interpreted by the referred to Official Opinions, indicate that a person is to be furnished proper burial where he has the means necessary to pay such burial expense. At the same time, research has failed to reveal any statutory authority directing the manner by which such results shall be accomplished. It is clear from the foregoing statute that the nearest relatives, or persons entitled to the possession of the body, are entitled to make arrangements for such burial and entitled to the possession of the body for such purpose. No specific provisions are made for those cases outside the jurisdiction of the county coroner (where there are no known persons entitled to possession of the body) as to who has the authority to order the body turned over to an undertaker for the purpose of burial. In these latter cases, since the statute contemplates a proper burial where the decedent has available means therefor, and since under such circumstances there must be a

OPINION 9

reasonably prompt disposition of the body, it should be determined that any person having legal possession of such body, could order such body turned over to a licensed undertaker for burial.

In the last referred to situation at least two means are suggested for payment for such burial, to wit:

1. Payment could be received through the provisions of Acts of 1953, Ch. 112, Sec. 809, as found in Burns' (1953 Repl.), Section 7-209, being a part of the Indiana Probate Code, which provides as follows:

“This act shall not be construed to prevent the application by any person, association or corporation of all or any portion of any obligation owed to a decedent's estate and designed, intended or created for the purpose of paying the funeral expenses or expenses of the last illness of the deceased from directly applying the proceeds of such obligation for such purpose. The payment of such expenses by the obligor or person holding such funds shall be a complete defense to the extent of such payment to the demand of any person on behalf of such estate or any other claimant.”

2. If the foregoing means are not available, a claim for funeral expenses could be filed against the estate of said decedent. If no estate is opened within the prescribed period of time the undertaker, as a creditor, could cause an estate to be opened for the purpose of applying other funds of the decedent to the payment of his claim for funeral expenses.

Since your question covers such a large range of circumstances, which may vary in each case, the foregoing is intended as a general guide and not intended to exclude from consideration any special laws which might apply in special instances both as to the right of burial or the means available for a collection of such expense.