

October 2, 2008

Bill Hartnett, Director  
Department of Veterans Services  
77 South High St., 7th Floor  
Columbus, Ohio 43215-6117

SYLLABUS:

2008-033

The requirement of R.C. 5901.32 that burial or cremation expenses incurred under R.C. 5901.25-.32 for indigent veterans and their family members be paid from the "county fund" refers to the county general fund and permits the expenses to be paid from any moneys in the county general fund that are available for this purpose. Amounts (up to .5 mill) that are levied for the county veterans service commission under R.C. 5705.05(E) and R.C. 5901.11 as part of the county general levy are included in the county general fund and may be used for indigent veterans burial assistance if budgeted and appropriated for this purpose.



Nancy H. Rogers  
Attorney General  
State of Ohio

Opinions Section  
30 E. Broad St., 15<sup>th</sup> Floor  
Columbus, OH 43215-3400  
Telephone: (614) 752-6417  
Facsimile: (614) 466-0013  
www.ag.state.oh.us

October 2, 2008

OPINION NO. 2008-033

Bill Hartnett, Director  
Department of Veterans Services  
77 South High St., 7th Floor  
Columbus, Ohio 43215-6117

Dear Director Hartnett:

We have received a request for a formal opinion concerning the meaning of “county fund” as used in R.C. 5901.32 in connection with the payment of expenses of burial or cremation of indigent veterans or their family members. The question is whether the expenses approved under R.C. 5901.32 should be paid from amounts levied, budgeted, and appropriated to the county veterans service commission or from other moneys of the county.<sup>1</sup>

For the reasons discussed below, we conclude that the requirement of R.C. 5901.32 that burial or cremation expenses incurred under R.C. 5901.25-.32 for indigent veterans and their family members be paid from the “county fund” refers to the county general fund and permits the expenses to be paid from any moneys in the county general fund that are available for this purpose. Amounts (up to .5 mill) that are levied for the county veterans service commission under R.C. 5705.05(E) and R.C. 5901.11 as part of the county general levy are included in the county general fund and may be used for indigent veterans burial assistance if budgeted and appropriated for this purpose.

---

<sup>1</sup> Am. Sub. S.B. 289, 127th Gen. A. (eff. Aug. 22, 2008), created the Department of Veterans Services and the office of Director of Veterans Services. *See* R.C. 121.02(T); R.C. 121.03(V); R.C. 5902.01. The Department has assumed the functions previously performed by the Governor’s Office of Veterans Affairs. *See* R.C. 5902.02; Am. Sub. S.B. 289, 127th Gen. A. (eff. Aug. 22, 2008) (sec. 5, uncodified). The question addressed in this opinion was submitted earlier this year by Timothy A. Espich, who then served as Director of the Governor’s Office of Veterans Affairs and now serves as the Assistant Director of the Department of Veterans Services.

### **Background Information**

As outlined in the letter requesting this opinion, the provisions of R.C. 5901.25-.32 authorize the burial or cremation of “any veteran, or the parent, spouse, or surviving spouse of any such veteran, who dies without the means to defray the necessary funeral or cremation expenses.” R.C. 5901.25. R.C. 5901.25 states that the board of county commissioners “shall require the veterans service commission” to consider applications for assistance and to arrange for burial or cremation of an indigent veteran or qualified family member as provided by statute. For purposes of this opinion, we refer to these costs of burial or cremation as “indigent veterans burial assistance.”

We have been informed that at least one county prosecuting attorney has taken the position that indigent veterans burial assistance under R.C. 5901.25-.32 should be paid from the money (up to .5 mill of the county general levy) levied for a county veterans service commission under R.C. 5705.05(E) and R.C. 5901.11. The request letter asserts a different position, stating:

Our office has generally considered that the county veterans service commissions in executing their responsibilities under [R.C. 5901.25-.32] were operating on behalf of the board of county commissioners and were expending county general funds in their name, and not the five-tenths mill funds of the county veterans service commission.

Thus, there is a question regarding the manner in which R.C. 5901.32 should be interpreted and applied.

### **Organization and Operation of a County Veterans Service Commission**

To address this question, it is helpful to review the organization and operation of a county veterans service commission (VSC). Each county has a VSC that is responsible for providing financial assistance to indigent veterans and their qualified dependents and for participating in the provision of burial or cremation services for indigent veterans and their qualified family members. R.C. 5901.02-.021; R.C. 5901.03; R.C. 5901.08; R.C. 5901.14-.15; R.C. 5901.25-.32. The VSC also operates the veterans service office and carries out related statutory responsibilities. R.C. 5901.03. The VSC is empowered to employ an executive director, investigators, clerks, and one or more county veterans service officers. R.C. 5901.06-.07.

With regard to the provision of financial assistance for veterans and their qualified dependents (spouse, surviving spouse, dependent parent, minor child, or ward), statutory directives require the VSC to accept applications and determine, in each instance, whether to award an allowance. R.C. 5901.08-.09. When an allowance is awarded, the VSC certifies the recipient to the county auditor, who issues a warrant for the allowance. R.C. 5901.14. The VSC is also authorized to grant qualified persons immediate emergency assistance, financial or otherwise. R.C. 5901.15. It has been found, for example, that a VSC may make mortgage payments for the benefit of a veteran and indigent members of the veteran’s family “if making

such payments is consistent with the actual housing need.” 1994 Op. Att’y Gen. No. 94-062 (syllabus, paragraph 1); *see also* 1932 Op. Att’y Gen. No. 4821, vol. III, p. 1398 (emergency assistance may include payment to a grocer for food furnished to a person needing immediate relief).

The primary source of funding for the VSC is a levy in an amount up to .5 mill made by the board of county commissioners as part of the county general levy for current expenses authorized by R.C. 5705.04(B) and R.C. 5705.05, within the 10-mills of inside millage that may be levied without the vote of the electorate.<sup>2</sup> In this regard, R.C. 5901.11 requires the VSC to meet each year to determine “the probable amount necessary for the aid and financial assistance of persons entitled to such aid and assistance and for the operation of the veterans service office for the ensuing year.” After making this determination, the VSC must prepare and submit a budget to the board of county commissioners. R.C. 5901.11; *see* R.C. 5705.28(C); 1985 Op. Att’y Gen. No. 85-066 (overruled in part on other grounds by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment) at 2-253 (the funding procedure set forth in R.C. 5901.11 “applies to all lawful expenditures of the commission, including costs of administration, employees’ salaries, and operating expenses”).<sup>3</sup>

The board of county commissioners may review the VSC’s proposed budget and must appropriate funds to the VSC pursuant to Title III of the Revised Code (governing the organization, powers, and duties of counties), R.C. 5705.05 (stating, in division (E), that the general levy for current expenses, in the case of a county, includes “the amounts necessary . . . for the relief of honorably discharged soldiers, indigent soldiers, sailors, and marines”), and R.C. 5705.38-.41 (governing the appropriation and expenditure of moneys by a subdivision or taxing unit, including a county). R.C. 5901.11.<sup>4</sup> The Ohio Supreme Court has held that the county

---

<sup>2</sup> *See* Ohio Const. art. XII, § 2; R.C. 5705.02-.03; R.C. 5705.04(B); R.C. 5705.05; 2008 Op. Att’y Gen. No. 2008-009; 1983 Op. Att’y Gen. No. 83-032 (overruled in part on other grounds by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment) (syllabus) (pursuant to R.C. 5705.03 and R.C. 5705.05, moneys levied under R.C. 5901.11 for a soldiers’ relief commission “are raised as part of the general levy for current expenses, which need not be submitted to the electors for approval”).

<sup>3</sup> R.C. 5705.28(C)(1) requires a commission that is entitled to participate in any appropriation or revenue of a subdivision to file with the taxing authority (or with the chief executive officer of a municipal corporation) an estimate of contemplated revenue and expenditures for the ensuing fiscal year. *See also* R.C. 5901.03(D) (the VSC shall cause the budgets of the veterans service commission and veterans service office to be presented to the board of county commissioners for approval).

<sup>4</sup> The appropriation of moneys by the county to the VSC is governed by R.C. 5705.38-.41 and related provisions. *See generally* 1994 Op. Att’y Gen. No. 94-007; 1966 Op. Att’y Gen. No. 66-170 (overruled in part on other grounds by 1991 Op. Att’y Gen. No. 91-008 on the basis of

commissioners must approve the VSC's budget requests provided they are reasonable and do not exceed the .5 mill levy. *Lynch v. Gallia County Board of Commissioners*, 79 Ohio St. 3d 251, 680 N.E.2d 1222 (1997) (syllabus) ("R.C. 5901.11 imposes a mandatory duty upon a board of county commissioners to fund a lawful budget request of a veterans service commission up to the five-tenths mill limitation set forth in the statute").<sup>5</sup> After approving the budget, the board of county commissioners is required to levy a property tax necessary to raise the amount required by the budget and then to appropriate that amount to the VSC. R.C. 5901.11; R.C. 5705.38-41.

The amount so levied for the VSC is included as part of the county general levy for current expenses. See 1983 Op. Att'y Gen. No. 83-032 (overruled in part on other grounds by 1991 Op. Att'y Gen. No. 91-008 on the basis of statutory amendment) at 2-120 (the levy for soldiers' relief is "included within the general levy for current expenses"). Proceeds of the general levy for current expenses, including amounts levied for the VSC and other moneys of the county, are placed in the county general fund.<sup>6</sup> See R.C. 5705.10(A) ("[a]ll revenue derived

---

statutory amendment); 1950 Op. Att'y Gen. No. 1532, p. 127 (overruled in part on other grounds by 1991 Op. Att'y Gen. No. 91-008 on the basis of statutory amendment); 1948 Op. Att'y Gen. No. 3435, p. 348 (overruled in part on other grounds by 1991 Op. Att'y Gen. No. 91-008 on the basis of statutory amendment).

<sup>5</sup> The provisions of R.C. 5901.11 and its predecessors have appeared in various forms throughout the years. Except for the period between 1988 and 1994, the obligation of the county commissioners to provide funding in the amount requested by the VSC (previously the soldiers' relief commission), up to the .5 mill permitted by statute, has been found to be mandatory. See *Lynch v. Gallia County Board of Commissioners*, 79 Ohio St. 3d 251, 254-57, 680 N.E.2d 1222 (1997); see also, e.g., *State ex rel. Veterans Service Office of Pickaway County v. Bd. of County Comm'rs*, 61 Ohio St. 3d 461, 462-63, 575 N.E.2d 206 (1991); 2001 Op. Att'y Gen. No. 2001-013, at 2-75 to 2-77; 1991 Op. Att'y Gen. No. 91-008; 1985 Op. Att'y Gen. No. 85-066 (overruled in part by 1991 Op. Att'y Gen. No. 91-008 on the basis of statutory amendment) (syllabus, paragraph 6); 1983 Op. Att'y Gen. No. 83-032 (overruled in part by 1991 Op. Att'y Gen. No. 91-008 on the basis of statutory amendment) (syllabus); 1935 Op. Att'y Gen. No. 3897, vol. I, p. 108 (overruled in part by 1991 Op. Att'y Gen. No. 91-008 on the basis of statutory amendment); 1930 Op. Att'y Gen. No. 2114, vol. II, p. 1149 (overruled in part by 1991 Op. Att'y Gen. No. 91-008 on the basis of statutory amendment). See generally *Lynch v. Gallia County Board of Commissioners*, 79 Ohio St. 3d at 258 ("veterans service commissions enjoy a unique history and status").

<sup>6</sup> In addition, the general fund also holds moneys other than general levy moneys. Various moneys in the general fund (from the general levy or from other sources) are restricted to use for limited purposes. See, e.g., R.C. 5747.51(J) ("[a]ll money received into the treasury of a subdivision from the undivided local government fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision"); 2008 Op. Att'y

from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund”).<sup>7</sup>

General levy moneys that are budgeted and appropriated for the use of the VSC are placed in a “cost center” in the general fund, where they are available for expenditure by the county VSC. The board of county commissioners is required to approve the VSC’s budget as provided in R.C. 5901.11. However, moneys that have been appropriated to the VSC may generally be expended by the VSC without additional approval by the board of county commissioners. *See* 1966 Op. Att’y Gen. No. 66-170 (overruled in part on other grounds by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment) at 2-362 (“after the appropriation [to the soldiers’ relief commission] has been effected and the funds allocated, the disbursal of the funds within each itemized amount is completely within the discretion of the soldiers’ relief commission”); 1930 Op. Att’y Gen. No. 2114, vol. II, p. 1149 (overruled in part on other grounds by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment) at

---

Gen. No. 2008-009; 2006 Op. Att’y Gen. No. 2006-009, at 2-78 to 2-79; 2000 Op. Att’y Gen. No. 2000-039, at 2-240 (“proceeds from the sale of property disposed of pursuant to R.C. 2933.41 must be deposited into an account within a county’s or township’s general fund for use by the county’s or township’s law enforcement agencies”); *see also* Ohio Const. art. XII, § 5; R.C. 5705.10(H) (“[m]oney paid into any fund shall be used only for the purposes for which such fund is established”); 2008 Op. Att’y Gen. No. 2008-009, slip op. at 14 (“[b]y its terms the general levy for current expenses is a general levy rather than a special levy. Nonetheless, it imposes a tax for specified purposes and thus is subject to the provisions of Ohio Const. art. XII, § 5 stating that ‘[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied’”). Care must be taken not to commingle moneys that are restricted to use for different purposes. *See, e.g.*, 2008 Op. Att’y Gen. No. 2008-009.

<sup>7</sup> *See also State ex rel. Veterans Service Office of Pickaway County v. Bd. of County Comm’rs*, 61 Ohio St. 3d 461, 464, 575 N.E.2d 206 (1991) (the moneys levied for the VSC are included in “the general fund resulting from the general levy”); R.C. 5705.09(A); 2008 Op. Att’y Gen. No. 2008-009; 1935 Op. Att’y Gen. No. 4134, vol. I, p. 382, at 385 (proceeds of the levy for soldiers’ relief “should be set up as an item in the general fund”); 1930 Op. Att’y Gen. No. 2114, vol. II, p. 1149 (overruled in part by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment) at 1154 (stating of amendments that provided for funding the soldiers’ relief commission as part of the general levy, rather than by means of a special levy: “While it is true that these moneys are no longer required to be credited to a special fund, I think the legislature clearly intended where there is a mandatory requirement to include a specific item in the general fund for a specific purpose, moneys raised by taxation for that purpose must be appropriated therefor”).

1153; *see also, e.g.*, R.C. 5901.07 (the compensation of service officers and employees “shall be paid out of funds appropriated to the commission, as provided in [R.C. 5901.11]”); R.C. 5901.14 (“[t]o each person certified by the veterans service commission to the county auditor, the auditor shall issue a warrant upon the county treasurer for the allowance awarded to that person by the commission”).

### **Funding for Burial of Indigent Veterans and Their Qualified Family Members**

As previously mentioned, the provisions pertaining to assistance for the burial or cremation of indigent veterans and their qualified family members appear in R.C. 5901.25-.32. R.C. 5901.25 states that the board of county commissioners “shall require” the VSC to take action to contract for indigent veterans burial assistance. To provide this assistance, the VSC must make a finding “that the family of the deceased is unable, for want of means, to defray the expenses of the burial or cremation, or that the family may be deprived of means actually necessary for its immediate support” and then cause the deceased to be buried or cremated and make a report to the board of county commissioners. R.C. 5901.27. The report must assert a finding of indigency and must include an accurate itemized statement of the expenses incurred by reason of the burial or cremation. R.C. 5901.27. The VSC must use contracts prescribed by statute, must see that the funeral directors furnish the items specified by contract, and must assure that the entire amount contributed by the county does not exceed the sum of one thousand dollars, with any remaining costs paid by the family or friends of the deceased. R.C. 5901.26; *see* R.C. 5901.25-.32. The funeral director is required to “present the itemized bill and contract, as approved by the veterans service commission, to the county auditor,” and make an oath that the contract has been honestly and faithfully performed. R.C. 5901.30.

The VSC thus performs burial and cremation duties on behalf of the board of county commissioners as required by the board of county commissioners, and reports its activities to the board of county commissioners. When the board of county commissioners receives the VSC’s report and statement of burial or cremation expenses as provided in R.C. 5901.27, the board “shall transcribe” the facts in a book kept for that purpose and “shall certify” the expenses thus incurred to the county auditor, who “shall draw a warrant for those expenses upon the county treasurer, to be paid from the *county fund* to such persons as are designated by the board.” R.C. 5901.32 (emphasis added). The meaning of “county fund” is the subject of your question.<sup>8</sup>

---

<sup>8</sup> The complete text of R.C. 5901.32 is as follows:

Upon securing the report and statement of expenses as provided by [R.C. 5901.27], the board of county commissioners shall transcribe in a book to be kept for that purpose, all the facts contained in the report concerning a deceased veteran, and shall certify the expenses thus incurred to the county auditor, who shall draw a warrant for those expenses upon the county treasurer, *to be paid from the county fund* to such persons as are designated by the board. Upon the death of

The term “county fund” has long been part of R.C. 5901.32 and its predecessor provisions.<sup>9</sup> Although R.C. 5901.32 does not specify which county fund is intended, related provisions indicate that the reference is to the county general fund. In particular, the preceding section of the Revised Code, R.C. 5901.31, states that, if a saving of money is effected by reason of the loan of automobiles, the ownership of a cemetery lot, or the provision of other items listed in the bill of expenses, “the amount of such saving shall *remain in the general fund of the county.*” R.C. 5901.31 (emphasis added).<sup>10</sup> The fact that amounts not expended remain in the general fund indicates that amounts that are expended are taken from the general fund.

Construing “county fund” in R.C. 5901.32 to refer to the county general fund, however, does not clearly identify the source of payment, because, as discussed above, both moneys levied for the county VSC and other county moneys are placed in the county general fund. Hence, the statutory language does not define precisely which moneys may be used to pay for indigent veterans burial assistance under R.C. 5901.32. The question is whether county VSC moneys may be used for this purpose.

### **Construction of R.C. 5901.32**

As discussed above, the letter requesting this opinion asserts that, in executing its responsibilities under R.C. 5901.25-.32, a county VSC acts on behalf of the board of county

---

any indigent veteran residing within the county at the time of death and the burial of the indigent veteran or the indigent veteran’s cremated remains, the board shall make application to the proper authorities, under the United States government, for a suitable headstone, as provided by act of congress, and shall cause it to be placed at the grave of the deceased veteran or the deceased veteran’s cremated remains. (Emphasis added.)

<sup>9</sup> See 99 Ohio Laws 99, 101 (H.B. 1039, passed Apr. 9, 1908) (enacting the initial version of R.C. 5901.32, which required the board of county commissioners, upon receipt of a report and statement of expenses from the burial committee, to certify the burial expenses to the county auditor, “who shall draw his warrant for the same . . . upon the county treasurer, to be paid out of the county fund of said county”); 1929 Op. Att’y Gen. No. 820, vol. II, p. 1264, at 1266 (quoting G.C. 2957, predecessor to R.C. 5901.32); *accord* 1931 Op. Att’y Gen. No. 3279, vol. II, p. 744, at 746.

<sup>10</sup> Earlier versions of R.C. 5901.31 allowed amounts so saved, at the discretion of the committee on the burial of indigent veterans appointed under R.C. 5901.25, to be paid to the family of the deceased or to those who cared for the deceased in life, rather than remaining in the general fund of the county. See, e.g., 1993-1994 Ohio Laws, Part IV, 6089, 6099 (Am. Sub. H.B. 448, eff. July 22, 1994) (amending, *inter alia*, former version of R.C. 5901.31); 1935 Op. Att’y Gen. No. 4517, vol. II, p. 982, at 986 (summarizing G.C. 2956, predecessor to R.C. 5901.31).

commissioners and expends general funds of the county, rather than amounts levied, budgeted, and appropriated to the VSC. This assertion is based upon statutory language indicating that the veterans service commission acts on behalf of the board of county commissioners in arranging indigent veterans burial assistance. See R.C. 5901.25 (“[t]he board of county commissioners shall require the veterans service commission” to contract for funerals for indigent veterans or qualified family members); see also R.C. 5901.27 (the VSC shall make a report to the board of county commissioners setting forth an accurate, itemized statement of expenses incurred by reason of a burial or cremation); R.C. 5901.32.

The argument that the VSC is expending general funds of the county, rather than VSC funds, is supported by the fact that, in contrast with ordinary expenditures of VSC funds, R.C. 5901.32 requires that costs of indigent veterans burial assistance under R.C. 5901.25-.32 be certified to the county auditor by the board of county commissioners. The required participation of the board of county commissioners suggests that the expenditure is different from general expenditures of VSC moneys, and is intended to be an expenditure by the county commissioners of moneys that have not been appropriated to the VSC. This suggestion is supported by R.C. 5901.28, which provides for the payment of burial or cremation expenses by the board of county commissioners under R.C. 5901.32, without any participation by the VSC, upon the death of an inmate in a home for indigent parents, spouses, or surviving spouses of veterans and receipt of a certificate from the attending physician.

Existing statutory language thus requires that indigent veterans burial assistance under R.C. 5902.25-.32 be paid upon certification by the board of county commissioners, following approval and submission by the VSC. We agree that the statutory language indicates that general fund moneys other than those levied for the VSC may be used for indigent veterans burial assistance, but we do not find that R.C. 5901.32 excludes the possibility that VSC funds may be used. Rather, because R.C. 5901.32 does not specify which moneys in the county general fund are to be used to pay for burial expenses under R.C. 5901.25-.32, we find that R.C. 5901.32 is ambiguous on this point and we look to related matters to assist us in construing the statute.

The goal in construing a statute is to determine the intent of the legislature. *Henry v. Central Nat’l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph 2) (“[t]he primary purpose of the judiciary in the interpretation or construction of statutes is to give effect to the intention of the General Assembly, as gathered from the provisions enacted, by the application of well-settled rules of interpretation, the ultimate function being to ascertain the legislative will”). When the language of a statute is ambiguous, it is appropriate to consider various factors that aid in its construction, including the object sought to be attained, the circumstances under which the statute was enacted, the legislative history of the statute, other laws upon the same or similar subjects, the consequences of a particular construction, and the administrative construction of the statute. R.C. 1.49; see also R.C. 1.47 (“[i]n enacting a statute, it is presumed that: . . . (C) A just and reasonable result is intended”).

In the instant case, the administrative construction of the statute assists us in interpreting R.C. 5901.32. See *Industrial Comm’n v. Brown*, 92 Ohio St. 309, 311, 110 N.E. 744 (1915)

(“[a]dministrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative to do so”); *Wadsworth v. Dambach*, 99 Ohio App. 269, 281, 133 N.E.2d 158 (Ottawa County 1954) (even absent formally adopted written regulations, a longstanding administrative interpretation of a law should be considered in determining the meaning of a statute); 1999 Op. Att’y Gen. No. 99-013, at 2-108 (“a construction of R.C. 5907.04 by the board of trustees of the Ohio Veterans’ Home should be followed unless the construction is unreasonable or impermissible”).

We have been informed by representatives of county officials and by representatives of the Office of the Auditor of State that expenditures for indigent burials or cremations under R.C. 5901.25-.32 have for many years been made from the amounts levied and budgeted for the county VSC, and that amounts anticipated to be needed for this purpose are commonly included in the budget of the county VSC and appropriated to the county VSC to be expended for this purpose. As discussed more fully below, this practice is neither unreasonable nor inconsistent with applicable statutes.<sup>11</sup>

The language of R.C. 5901.32, discussed above, does not describe precisely which moneys are to be used for indigent veterans burial assistance. An examination of the relationship between the county and the VSC indicates that VSC funds may be used for indigent veterans burial assistance in proper circumstances.

Under R.C. Chapter 5901, the county VSC is the branch of county government with responsibility for caring for the needs of indigent veterans and their families. *See Lynch v. Gallia County Board of Commissioners*, 79 Ohio St. 3d at 258 (stating that the Ohio State Association of Veterans Service Commissions has explained that veterans service commissions “are vested with a special public trust to see that those who have served our country *receive a*

---

<sup>11</sup> *See* 2004 Op. Att’y Gen. No. 2004-017, at 2-141 (“it is appropriate for funds and accounts to be structured to enable public officials to expend public moneys in accordance with the provisions of law governing the expenditure of those moneys”); *see also* 2008 Op. Att’y Gen. No. 2008-009 (when taxes included in the general levy are levied for a particular purpose, they are not available for other purposes for which general levy or general fund moneys may be used); 2001 Op. Att’y Gen. No. 2001-033, at 2-197 (“[b]ecause a veterans service commission is a county body that is funded through the proceeds of a tax levy, the moneys so provided to the commission are public funds of the county that are subject to numerous provisions of law concerning the manner in which those funds may be used”); 2000 Op. Att’y Gen. No. 2000-039, at 2-240 (“[i]t is a long-established principle that where the expenditure of public moneys is limited by statute, the moneys may only be spent in accordance with the statutory provisions”); 1997 Op. Att’y Gen. No. 97-030, at 2-176 (it is “fundamental under Ohio law that money that is derived from a particular tax levy may be expended only for the purpose for which that levy was adopted”).

*decent burial* and are remembered with honor, and that they and their families are kept from indigency” (emphasis added);<sup>12</sup> 2004 Op. Att’y Gen. No. 2004-034, at 2-311 (a VSC “is considered to be an entity of county government”); 2004 Op. Att’y Gen. No. 2004-032, at 2-291 (a VSC has been recognized as a subordinate department of the county); 1993 Op. Att’y Gen. No. 93-065. By statute, the amounts levied for the county VSC are to be used for the aid and

---

<sup>12</sup> We are aware that *Lynch v. Gallia County Board of Commissioners*, 79 Ohio St. 3d 251, 680 N.E.2d 1222 (1997), has been cited in support of the proposition that burial assistance under R.C. 5901.25-.32 should be paid from VSC moneys, consisting of up to .5 mill of the county general levy under R.C. 5705.05(E) and R.C. 5901.11. Our reading of the *Lynch* case indicates, however, that the case does not establish whether VSC moneys may be used for indigent veterans burial expenses.

In the *Lynch* case, the Ohio Supreme Court reviewed the history of R.C. 5705.11 and concluded that, under the statutory language then in effect, the board of county commissioners had a mandatory duty “to fund a lawful budget request of a veterans service commission up to the five-tenths mill limitation set forth in the statute.” *Lynch v. Gallia County Board of Commissioners* (syllabus). The court considered statutory language authorizing the board of county commissioners to review the VSC’s proposed budget and permitting the VSC to request a hearing and found these provisions consistent with its conclusion, stating in part:

Furthermore, R.C. 5901.11 itself limits a proper proposed budget to an amount “not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county.” Additionally, *R.C. 5901.25 through 5901.32 are mandatory provisions directing the veterans service commission to assist in the burial of indigent veterans. A lawful commission budget must include funding for this activity.* R.C. 5901.11 Finally, basic flaws such as mathematical errors may be detected through board review. *Id.*

*Lynch v. Gallia County Board of Commissioners*, 79 Ohio St. 3d at 257 (emphasis added).

The court referred to the indigent veterans burial assistance provisions, along with various other provisions of R.C. Chapter 5901, as examples of matters about which the county commissioners’ review was appropriate, stating that a lawful VSC budget must include funding for “this activity.” The court’s opinion does not describe the manner in which the VSC must assist in the burial of indigent veterans and does not specifically address the costs of burial. The funding for “this activity” might thus be limited to the activity that the county VSC is mandated to take under R.C. 5901.25-.32—namely, as required by the board of county commissioners to identify eligible deceased veterans and family members, to contract with funeral directors, to review and approve itemized bills, and to submit reports and statements of expenses to the board of county commissioners—or it might also include the expenses due to the funeral director or other persons designated by the board under R.C. 5901.32. The *Lynch* case does not provide a definitive resolution of this issue.

financial assistance of qualified persons and for the operation of the veterans service office. R.C. 5901.11; *see also* R.C. 5901.03(C), (J) (duties of the county VSC include “[e]stablishing policies and procedures for the administration of assistance as provided under this chapter” and “[t]aking any other actions required by this chapter”).

The expenditure of money to pay for indigent veterans burial assistance under R.C. 5901.25-.32 clearly constitutes financial assistance to the veteran’s family because it relieves the family of burial or cremation expenses, thereby freeing for other purposes such limited resources as the family might have. *See, e.g.*, 1992 Op. Att’y Gen. No. 92-014 (although stepchildren of a veteran are not eligible to apply for financial assistance from the VSC under R.C. 5901.08, the VSC may, in its discretion, include in an allowance to an eligible recipient amounts to relieve the financial obligations of caring for the stepchildren of a veteran). Hence, VSC funds may be used for indigent veterans burial assistance if the VSC budget allows the expenditure and if moneys are appropriated for this purpose. *See* 2001 Op. Att’y Gen. No. 2001-033, at 2-199 (“[i]t has long been the practice that statutes providing assistance to veterans are liberally construed in favor of the veterans,” though it is necessary to observe the principle that public funds may be disbursed only by clear authority of law); 1998 Op. Att’y Gen. No. 98-029, at 2-161 (“broad discretion has been granted to the various veterans service commissions to determine, in a reasonable manner, the bases upon which they will grant assistance”); 1948 Op. Att’y Gen. No. 3435, p. 348 (overruled in part on other grounds by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment) at 351 (“we may consider that [G.C. 2936, now R.C. 5901.11] has been broadened in its scope so as to include all matters which are placed within the jurisdiction of the soldiers’ relief commission”).

Because amounts (up to .5 mill) levied for the county VSC under R.C. 5705.05(E) and R.C. 5901.11 are part of the county general levy and are included in the county general fund, they are included among funds from which indigent veterans burial assistance may be paid. R.C. 5901.32; *see also* R.C. 5901.26 (burial assistance under R.C. 5901.25-.32 is “contributed by the county”); 1962 Op. Att’y Gen. No. 3067, p. 441 (overruled in part on other grounds by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment) at 445 (because expenses of the members of the soldiers’ relief commission are necessarily incident to the providing of aid and relief to soldiers, they should be paid out of funds from the tax levied under R.C. 5901.11: “it is apparent that such funds are county funds, and I thus conclude that an expenditure from such funds is ‘at county expense’”). Accordingly, although the longstanding practice of using VSC moneys for burial assistance is not compelled by R.C. 5901.32, we find that it is permitted under R.C. 5901.32.<sup>13</sup>

---

<sup>13</sup> Prior to July 22, 1994, the functions of determining whether deceased veterans or their relatives were eligible for burial assistance and of contracting for that assistance were the responsibility of either the committee on the burial of indigent veterans (which was appointed by the board of county commissioners under R.C. 5901.25 and consisted of two suitable persons in each township and ward in the county, other than those prescribed for the care of paupers and the

This use of VSC funds is appropriate because the county VSC is the branch of county government with responsibility for caring for the needs of indigent veterans and their families, and these needs may include both financial and emergency needs for living expenses and needs for resources to provide a respectful burial or cremation. It is permitted as an expenditure of the VSC because the VSC is required to arrange for the burial or cremation and to approve the contracts and bills. We conclude, therefore, that amounts (up to .5 mill) that are levied for the county VSC under R.C. 5705.05(E) and R.C. 5901.11 as part of the county general levy are included in the county general fund and may be used for indigent veterans burial assistance if budgeted and appropriated for this purpose.

We note that R.C. 5901.32 states plainly that, in order for expenses of the burial of an indigent veteran or qualified relative to be paid under a contract entered into by the VSC pursuant to R.C. 5901.25 and R.C. 5901.27, the board of county commissioners must certify the expenses to the county auditor and designate the persons to be paid. Therefore, these burial expenses cannot be paid, whether with VSC moneys or with other county funds, except pursuant to the county commissioners' certification. *See generally State ex rel. Semetko v. Bd. of Comm'rs of Lucas County*, 30 Ohio App. 2d 130, 134, 283 N.E.2d 648 (Lucas County 1971) (the provisions of R.C. Chapter 5901 constitute an integrated and complex statutory plan and must be read in pari materia; no part may be treated as mere surplusage in disregard of the overall

---

custody of criminals) or an individual appointed in place of the committee. *See* 1993-1994 Ohio Laws, Part IV, 6089, 6097-99 (amending, *inter alia*, former versions of R.C. 5901.25-.27, .29-.31); 1992 Op. Att'y Gen. No. 92-059 at 2-240; 1935 Op. Att'y Gen. No. 4517, vol. II, p. 982; 1931 Op. Att'y Gen. No. 3279, vol. II, p. 744; 1929 Op. Att'y Gen. No. 820, vol. II, p. 1264.

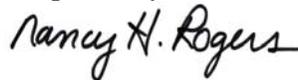
In 1994, the General Assembly amended R.C. 5901.25 to eliminate the authority of the board of county commissioners to appoint a committee on the burial of indigent veterans and to provide, instead, that the board of county commissioners "shall require the veterans service commission" to contract for the burial of indigent veterans or their family members. R.C. 5901.25; *see* 1993-1994 Ohio Laws, Part IV, 6089, 6097 (Am. Sub. H.B. 448, eff. July 22, 1994); *see also* Ohio Legislative Service Comm'n, 120-HB 448 LSC Analysis, at p. 9 (As Reported by H. Veterans Affairs) ("[t]he bill would remove the provisions for the appointment and operation of such committees [on the burial of indigent veterans], and provide instead that the board of county commissioners must require the veterans service commission to perform the services now performed by the committees"). When the duty of providing burial assistance to veterans and qualified family members was transferred to the veterans service commission in 1994, no amendments were made to R.C. 5901.32 or other funding provisions to indicate a change in the fund from which the burial expenses were to be paid. We have been informed by representatives of the Office of the Auditor of State that the practice of paying for indigent burials under R.C. 5901.32 from amounts budgeted to the VSC predates this statutory amendment, thereby supporting the conclusion that VSC levy moneys may be used for these burials.

legislative design of the chapter); 1935 Op. Att’y Gen. No. 4517, vol. II, p. 982; 1931 Op. Att’y Gen. No. 3279, vol. II, p. 744; 1919 Op. Att’y Gen. No. 281, vol. I, p. 494, at 496 (finding that the soldiers’ burial committee was authorized to contract for and bind the county up to the specified amount in the matter of burials, that certification by the county commissioners was required, and that, absent fraud or collusion, the commissioners could not review the committee’s decision or modify its contract); *cf.* 1962 Op. Att’y Gen. No. 3067, p. 441 (overruled in part on other grounds by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment) at 446 (R.C. 325.20, which requires authorization of the board of county commissioners for certain expenses pertaining to association meetings or conventions, applies to members of a soldiers’ relief commission).

### **Conclusion**

For the reasons discussed above, it is my opinion, and you are advised, that the requirement of R.C. 5901.32 that burial or cremation expenses incurred under R.C. 5901.25-.32 for indigent veterans and their family members be paid from the “county fund” refers to the county general fund and permits the expenses to be paid from any moneys in the county general fund that are available for this purpose. Amounts (up to .5 mill) that are levied for the county veterans service commission under R.C. 5705.05(E) and R.C. 5901.11 as part of the county general levy are included in the county general fund and may be used for indigent veterans burial assistance if budgeted and appropriated for this purpose.

Respectfully,



NANCY H. ROGERS  
Attorney General