

New Law Will Assist Townships with Indigent Funerals

By: T. Scott Gilligan, General Counsel, Ohio Funeral Directors Association

In the 2001 budget crunch, the Ohio legislature repealed Ohio Revised Code (ORC) Section 5101.52, under which the state contributed \$750 toward the funeral expenses of an indigent. With no funds coming from the state, the burden primarily fell upon municipalities and townships to pay for the funerals of deceased indigents. ORC Section 5101.52.1 provides that a township or municipal corporation has the statutory obligation to pay the burial or cremation expenses for deceased indigents who were residents at the time of death or whose bodies are not claimed by family members willing to pay the funeral expenses.

Although townships have the obligation to pay for burial and cremation expenses of deceased indigents, township trustees often found they did not have the ability to decide the method of disposition. In a bizarre twist, Ohio law did not take away the right to arrange the funeral and disposition from relatives of the deceased indigent even though those relatives were not paying for the funeral or disposition. Therefore, a township trustee who was willing to have the township pay for inexpensive cremation could be overridden by a next-of-kin who opts for a burial. Since the next-

of-kin's written authorization was required for cremation, the township would inevitably have to cover the cost of the indigent's more expensive burial.

A new law addressing who holds the right of disposition in Ohio will bring an end to a next-of-kin's ability to control the disposition without paying for it. House Bill (HB) 426, which added Sections 2108.70 to 2108.90 to the Revised Code, establishes a definitive priority list of those individuals who hold the right to arrange a funeral and disposition of a deceased human being. In addition, newly enacted Section 2108.89 makes clear that any person who elects to exercise this right of disposition under the statute shall be personally liable for the cost of any goods or services purchased in connection with the exercise of that right. For example, a next-of-kin who decides a decedent's remains will be buried will be responsible for paying for the grave plot, opening and closing the grave, and any casket or vault used in the interment.

When HB 426 takes effect on Oct. 9, 2006, townships will be able to dictate

the method of disposition for indigent funerals. This will allow the townships to opt for inexpensive cremation over the objection of family members who



prefer more expensive burials. Unless the family members are willing to incur the cost of the disposition they prefer, they have no voice in the disposition decision.

In addition to dictating the method of disposition, the township can also decide what funeral home to use and whether the township is willing to pay for any type of funeral ceremonies or services. It will also decide what disposition will be made of the cremated remains, although presumably it would direct that the cremated remains be delivered to the next-of-kin if so requested.

With the new flexibility presented by HB 426, townships may want to look into establishing a contract with a local funeral home or several funeral homes to handle funerals and dispositions of deceased indigents at set prices. This will greatly assist townships in meeting their statutory obligations under RC Section 5201.52.1 while staying within their budgetary constraints. ☐

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