

1781.

DOG REGISTRATION LAW—PERSON EMPLOYED BY SHERIFF TO CATCH AND IMPOUND DOGS CANNOT LEGALLY BE PAID MORE THAN 35 PER CENT OF GROSS RECEIPTS OF DOG AND KENNEL FUND IN ANY CALENDAR YEAR FOR SUCH SERVICES.

One employed or appointed by the sheriff exclusively for the purpose of catching and impounding dogs under the provisions of the dog registration law, cannot legally be paid more than thirty-five per cent of the gross receipts of the dog and kennel fund in any calendar year for such services.

COLUMBUS, OHIO, January 13, 1921.

HON. FOSTER E. KING, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—In your communication of recent date you present the following question:

“Section 5652-13, 108 O. L. 536, provides for the expending up to thirty-five per cent of the gross receipts of the dog and kennel fund in any calendar year for a dog catcher, etc. The dog catcher in this county has caught more dogs than thirty-five per cent of the gross receipts of the dog and kennel fund for this year will provide funds to pay him.

Can the auditor pay him this amount due him out of the business done for 1921, or is the work done by him in catching and destroying these dogs done without a possibility of receiving any compensation whatever?”

Your attention is invited to an opinion of this department found in Opinions of the Attorney-General for the year 1919, page 1448, in which a question closely related to the problem you present was considered. The syllabus of said opinion is as follows:

“County commissioners acting under the provisions of the dog registration law, sections 5652 G. C. et seq. as amended and supplemented in 108 Ohio Laws, are obligated to provide by appropriation from the dog and kennel fund for the several elements of expense incident to the administration of said law, such appropriations in the aggregate, however, to be limited to 35 per cent of the proceeds of the dog and kennel fund for the calendar year for which the appropriations are made.

The appropriations for the several objects involved in the administration of the law should be made separately and the amount thereof determined only by the necessities for proper administration of the law, subject of course, in the aggregate to the 35 per cent maximum limitation, and such appropriations being applicable to the specific purposes under the law, should be kept separate and distinct from the general ‘deputy and clerk hire funds’ of the auditor’s and sheriff’s offices.”

Section 5652-13 G. C., upon which said opinion was principally based and under which your question arises, provides:

“The registration fees provided for in this act (sections 5652 et seq.) shall constitute a special fund known as the dog and kennel fund which shall be deposited by the county auditor in the county treasury daily as

collected and be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets and other equipment necessary to carry out and enforce the provisions of the laws relating to the registration of dogs, and for the payment of animal claims as provided in sections 5840 to 5849, both inclusive, of the General Code, and in accordance with the provisions of section 5653 of the General Code. Provided, however, that the county commissioners by resolution shall appropriate sufficient funds out of the dog and kennel fund, said funds so appropriated not to exceed 35 per cent of the gross receipts of said dog and kennel fund in any calendar year, for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs in accordance with the provision of section 5652 and supplemental sections of the General Code."

The statute is specific in its provision relative to the maximum limitation of thirty-five per cent of the gross receipts of the dog and kennel fund in any calendar year which may be appropriated in the administration of the law.

In view of the holding of the opinion heretofore mentioned and the plain provisions of the statute, the conclusion is irresistible that the county commissioners cannot appropriate more than thirty-five per cent of the funds in any calendar year from the gross receipts of the dog and kennel fund for the same period in the administration of the dog registration law.

In Opinion number 229, found in Opinions of the Attorney-General, 1919, page 405, it was held that it was the duty of the sheriff to appoint such deputies as were necessary to properly administer this law; and in Opinion number 556, found in Opinions of the Attorney-General, 1919, page 994, it was held:

"Deputy sheriffs whose employment is referable to the increase of duties of the sheriff's office by reason of the provisions of the dog registration law, are not special deputies in the sense of their authority being limited to the performance of functions under said act, but are authorized to act in full capacity of regular deputies."

It was further said in this opinion:

"It follows then that in practice the sheriff being charged with the administration of the dog registration law, must provide himself not only with such deputies as are required in the administration of the other functions of his office, but also such additional deputy or deputies as may be required in the discharge of the new duties imposed by the dog registration law; and likewise it is made the duty of the county commissioners to co-operate in the matter to the extent of providing the funds for the employment of such additional deputies. Neither the duty nor the authority of the county commissioners in relation to providing this additional fund extends beyond a provision sufficient for the enforcement of the act in question, and likewise the extent of the authority of the sheriff for providing deputies to be compensated under this cumulative provision is measured by the necessities arising under the law."

Therefore it will be seen that in the event that a deputy sheriff is appointed and under the rulings referred to performs other duties on behalf of the sheriff and the county, a question might arise in such a case as to whether the commissioners would be authorized to allow further compensation under the provisions of section 2980 G. C. However, inasmuch as your statement of facts does not in-

dicating that the employe or deputy you have in mind performs services other than catching and impounding dogs, it would seem unnecessary to further consider this phase of the situation at this time.

In specific answer to your inquiry it is the opinion of this department, in view of the state of facts which you present, that there is no provision of law whereby the employe you mention can receive compensation other than that provided for in section 5652-13.

While I am reluctant to reach this conclusion in view of the hardship it will work under the state of facts you present, it is the well established principle in this state that moneys cannot be expended from the public treasury except in pursuance of law, and in view of this fact it would seem that no other conclusion can be reached.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1782.

APPROVAL, BONDS OF ALLEN COUNTY, OHIO, IN AMOUNT OF
\$36,600 FOR IMPROVEMENT OF CHILDREN'S HOME.

COLUMBUS, OHIO, January 13, 1921.

The Industrial Commission of Ohio, Columbus, Ohio.

1783.

APPROVAL, BONDS OF BELMONT COUNTY, OHIO, IN AMOUNT OF
\$32,700 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, January 13, 1921.

The Industrial Commission of Ohio, Columbus, Ohio.

1784.

APPROVAL, DEED OF CLARISSA COOK MOORE AND MARY A. BAKER,
LAND IN MONCLOVA TOWNSHIP, LUCAS COUNTY, OHIO, TO
COMMEMORATE THE "BATTLE OF FALLEN TIMBERS."

COLUMBUS, OHIO, January 14, 1921.

The Ohio State Archaeological and Historical Society, Columbus, Ohio.

GENTLEMEN:—You have recently requested that I officially pass upon two deeds you have submitted, one of which was executed by Clarissa Cook Moore, January 3, 1921, and the other executed by Mary A. Baker, December 30, 1920, both purporting to convey certain premises therein described to your society.

The first deed referred to purports to convey two and twenty-nine hundredths (2.29) acres of land to your society with certain permanent easements relating to