

1. By the terms of Section 5840, General Code, in order to entitle any owner of sheep killed or injured by dogs to enter a claim for damages, such owner must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.

2. Unless the owner of such sheep has given notice to a county commissioner in person or by registered mail, as required by Section 5840, General Code, within forty-eight hours after the loss or injury has been discovered, the county commissioners are without authority to allow and pay such claim.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2465.

FUNDS—RELEASE OF FUNDS SET ASIDE FOR ROAD IMPROVEMENT
AFTER PROJECT HAS BEEN ABANDONED—PROCEDURE—AUTHORITY OF COUNTY COMMISSIONERS AND TOWNSHIP TRUSTEES
WHEN BODIES ARE CO-OPERATING IN ROAD IMPROVEMENT.

SYLLABUS:

1. *Where proceedings have been instituted for the improvement of a county road, the cost of which is to be borne proportionately by the county, township and property owners, and pursuant to such proceedings the township clerk has certified that moneys are available for the purposes of the contract in connection with such improvement, the encumbrance created by such certificate does not expire at the end of the fiscal year but continues against the funds in question until such time as the county commissioners and township trustees take definite action by resolution abandoning the project.*

2. *Upon the adoption by the county commissioners and the township trustees of resolutions abandoning the project, the certificate of the township clerk may be cancelled and the funds released for other purposes.*

COLUMBUS, OHIO, August 20, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your recent communication as follows:

“We are enclosing herewith a letter from the prosecuting attorney of Monroe County, together with transcript of the proceedings for the improvement of a certain road in that county. You will note that the final step in the procedure is with reference to the surfacing of the road and that the trustees of the township have certified to the county their approval for the township’s share of the proposed surfacing in the sum of \$3,250.00 and the township clerk has certified that there are sufficient funds available to meet the township’s share so approved. It seems that the county commissioners have not proceeded with the surfacing of the road and the question which the prosecutor desires to have your opinion upon is whether in the event that the county commissioners do not proceed with the road the amount of the certification of the township trustees and the township clerk may be released so that it can be used in connection with another improvement in the township.

We respectfully request you to furnish this department your written opinion upon this question.”

The letter of the prosecutor which you enclose, is as follows :

"Herewith is enclosed a transcript of the proceedings of the county commissioners with relation to the construction of the Moore Ridge Road. This is the matter which Mr. Searles, the county surveyor, and myself took up with you in your office some ten days ago. You will recall that you suggested that I have a copy made of the proceedings of the county commissioners relative to this road forwarded you so that same might be handed to the Attorney General for an opinion.

Reference to the transcript of the proceedings of the county commissioners will show that a very large part of such proceedings had to do with the contract for the grading of said road. Only the 14th and 15th steps refer to the surface. However, as suggested by you in our conference relative to this matter, the original steps taken by way of petition for this road throw some light upon the proposition in mind of the commissioners at the outset. It is apparent that everything has been done by the commissioners to both grade and surface this road but to have the auditor certify to the availability of funds for the county's share in completing the surfacing.

In referring to the 14th and 15th steps set forth in the transcript of the proceedings of the county commissioners, you should consider the 15th step set forth as the 14th step and the 14th step set forth as the 15th step, in other words, the estimate for the surfacing of the Moore Ridge Road was approved on September 19th, 1927, and the township's share of the cost of same was certified to the county commissioners on October 3, 1927.

You will readily see, as we explained to you in our conference, that the question is whether or not the \$3250.00 certified by the township trustees for the surfacing of the Moore Ridge Road is tied up. The further question also arises—what action would be necessary on the part of the commissioners and trustees to release this money from this project so that it might be applied upon another one? My answer to the second question would be that this money could be released by joint resolution of the two boards to the effect that the project was to be abandoned. Another question that might arise—suppose this money is tied up as matters now stand and no action is taken by either board to relieve the situation, will not the certification of the township trustees expire with the end of this fiscal year?

Awaiting the results of the submission of this question to the Attorney General and appreciating your efforts in aiding me to solve this problem, I remain."

This letter raises three questions, namely :

1. Are the funds of the township now encumbered by reason of the certification appearing in the transcript enclosed?
2. What action may be taken at this time, releasing such funds?
3. Would the certification expire at the end of the fiscal year?

It is unnecessary to set forth in detail the proceedings which are enumerated in the transcript enclosed by the prosecutor. An improvement of the road in question was evidently undertaken under authority of Sections 6906 et seq. of the General Code, and the county was to pay forty percent, the township forty percent and the property owners twenty percent of the cost. As stated by the prosecutor, most of the steps taken pertained only to the grading of the road and the construction of culverts, and this work has apparently been completed. There appears however to have been

an estimate submitted to the county commissioners, showing the county and township's share of the surfacing of this road with a slag surface. Thereafter, on October 1, 1927, the township clerk formally certified to the county commissioners that certain funds were available to meet the township's share of the proposed surfacing.

Since this action was taken in 1927, the provisions of House Bill No. 80 enacted by the 87th General Assembly are not applicable since by Section 5625-39 of the Code as therein enacted it is specifically provided that the act shall not affect the existing funds established in any subdivision or the expenditures therefrom until January 1, 1928. It follows accordingly that the certificate furnished by the clerk of the township was made pursuant to the requirements of Section 5660 of the General Code, prior to its repeal in House Bill No. 80.

I need not quote all of Section 5660, as it then existed, but need only state that certificates that money is available are by that section rendered necessary in order that appropriations and contracts may be made by various subdivisions. The section states that:

"The sum so certified shall not thereafter be considered unencumbered until the county, subdivision or district is discharged from the contract, agreement or obligation or so long as the order is in force."

It is quite apparent that the funds of the township covered by the certification are encumbered at the present time by the certificate in question unless some other action has been taken by the county commissioners. That is to say, the action of the township in certifying the funds placed it in the power of the county commissioners to let the contract for the surfacing of the road, and until that project is definitely abandoned, there is no authority for the use of these funds for any other purpose. Your first question must accordingly be answered by stating that at the present time the funds in question are encumbered so as to prevent their use for any other purpose.

The second question is as to what steps can be taken to release this money. You will observe from the portion of Section 5660, General Code, which I have quoted above, that the encumbrance continues until the discharge of the obligation or as long as the order is in force.

Under the proceedings for the improvement of the road in question, the township is obligated to contribute to the improvement and the certification was made pursuant to that obligation. I am accordingly of the opinion that it will be necessary for the county commissioners to take definite action by resolution abandoning the resurfacing of the road in order to release the money in question. Such action would, in my opinion, discharge the obligation. While it is perhaps questionable whether any further action is necessary on the part of the township trustees, I believe it would also be advisable for them to take similar action. The action of both boards would, in my opinion, authorize the cancellation of the certificate in question and release the funds for other purposes.

It is further asked whether, in case no action is taken, the certification will expire at the end of the fiscal year. This question must be answered in the negative, in view of the fact that under the budget procedure in effect at the time this certificate was made, and under present budget procedure there is no reversion of encumbered funds at the expiration of the fiscal year. Thus Section 5649-3f, prior to its repeal in House Bill No. 80, provided for the certification by the fiscal officer of each subdivision of the amount of the actual free and unencumbered balances. Obviously the encumbered funds would not be used in the computation of the amount available in the treasury of the subdivision, and such encumbered funds did not revert so as to make them available for expenditures for other purposes. So long as a certification

is outstanding against such funds, they remain encumbered and available for the purpose of the contract or obligation, irrespective of the termination of the fiscal year. This is emphasized by the provisions of Section 5649-3h, General Code, then in effect, which was as follows:

"Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, or a transfer may be made from one appropriation item to another, provided that such amendment or supplement shall comply with all provisions of law governing the appropriating authority, including compliance with Section 5 of this act (G. C. 5649-3g), and provided further that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation for such purpose. Any appropriation shall cease to have force or effect after the termination of the fiscal year in which it was made; provided, however, that funds unexpended at the said termination of the said fiscal year and which had been appropriated during such year for the payment or performance of contractual obligations unliquidated and outstanding at such termination shall not be required to be re-appropriated, but such unexpended funds shall not be included by any budget-making body or board or any county budget commission in estimating the balance or balances available for the purposes of the next or any succeeding fiscal year."

Similar provision is now found in Section 5625-27 of the General Code, which need not be here quoted.

From the foregoing provisions, it is clear that, where a certificate has once been issued, the mere expiration of the fiscal year does not remove the encumbrance so as to make the funds so certified available for other purposes.

By way of specific answer to your inquiry, I am of the opinion that where proceedings have been instituted for the improvement of a county road, the cost of which is to be borne proportionately by the county, township and property owners, and pursuant to such proceedings the township clerk has certified that moneys are available for the purposes of the contract in connection with such improvement, such encumbrance continues against the funds in question until such time as the county commissioners take definite action by resolution abandoning the project.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2466.

BOARD OF EDUCATION—AUTHORITY TO EMPLOY PHYSICIANS AND NURSES—DISTRICT HEALTH COMMISSIONERS MAY BE EMPLOYED—COMPENSATION.

SYLLABUS:

1. *Under the provisions of Section 7692, General Code, a county board of education is not empowered to employ physicians and nurses for the purpose of making examinations and diagnosis of the school children and school employes within the county district.*