

664.

DISAPPROVAL, BONDS OF VILLAGE OF SHEFFIELD LAKE, LORAIN COUNTY—\$81,152.00.

COLUMBUS, OHIO, June 23, 1927.

Re: Bonds of Village of Sheffield Lake, Lorain County, \$81,152.00.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—An examination of the transcript for the above bond issue discloses that an attempt has been made to create a waterworks district in that portion of the village of Sheffield Lake lying north of the New York, Chicago and St. Louis Railway Company's right of way and that the entire property located within this district is to be assessed in proportion to the specific benefits which will result from said improvement rather than improving the specific streets located within the district by the laying of water mains and assessing lots and lands abutting on the streets according to the special benefits which will result therefrom.

I am unable to find any authority in law for the creation of such a waterworks district. There are other defects and errors in the transcript, but the foregoing defect makes the entire issue invalid.

You are therefore advised not to purchase the said bond issue.

Respectfully,
EDWARD C. TURNER,
Attorney General.

665.

APPROVAL, NOTE OF LONDONDERRY TOWNSHIP RURAL SCHOOL DISTRICT, GUERNSEY COUNTY—\$1,152.00.

COLUMBUS, OHIO, June 25, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

666.

LIVE STOCK—WHEN KILLED BY DOG, OWNER NOT ENTITLED TO VETERINARY EXPENSES.

SYLLABUS:

Under the provisions of Sections 5840, et seq., of the General Code, an owner of live stock injured or killed by a dog is not entitled to receive compensation from

the county funds for veterinary expenses incurred in an unsuccessful attempt to save such animals.

COLUMBUS, OHIO, June 27, 1927.

HON. C. LUTHER SWAIN, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—I am in receipt of your letter of June 16, 1927, reading as follows:

“The Commissioners of Clinton County ask the interpretation of your office upon General Code Sections 5840-5846 on the following set of facts:

A dog afflicted with rabies bit about two sheep, one horse, and forty-six head of hogs, all of which had to be killed or disposed of under the order of the State Board of Health. The claim is proper, as the dog was killed immediately after the live stock was bitten, and it had the rabies.

A question arises as to the allowance of a veterinary bill of \$80.00 included in the claim for the live stock. This bill was incurred, on the advice of a representative of the State, in treating these animals in an effort to save them, which did not succeed. This representative stated that the bill would have to be allowed by the county when presented along with the claim for the animals.

Of course, this bill would not have been incurred had it not been for the biting of the live stock by the dog, and in justice it appears that this claim should be allowed.

Before the commissioners allow the same they desire a ruling from your office as to the legality of the bill of \$80.00, in order that there may be no illegal payment that would require a finding by a county examiner.”

The question that you present is whether or not, under the provisions of Sections 5840, et seq., General Code, when a claim is presented for loss or injury to live stock, county commissioners may properly allow an item therein for veterinary expenses incurred in an unsuccessful attempt to save such animals after they had been bitten by an infected dog.

Your attention is directed to Sections 5840 to 5850, both inclusive, of the General Code, which relate to loss or injury to live stock caused by dogs.

Section 5840 provides:

“Any owner of horses, sheep, cattle, swine, mules and goats which have been injured or killed by a dog not belonging to him or harbored on his premises, may present to the township trustees of the township in which such loss or injury occurred, at a regular meeting of said trustees, within six months after such occurrence, a detailed statement of such loss or injury done, supported by his affidavit that it is a true account of such loss or injury. Such statement shall set forth the kind, grade, quality and value of the horses, sheep, cattle, swine, mules and goats so killed or injured, and the nature and amount of the loss or injury complained of, and shall be supported by the testimony of at least two freeholders who viewed the result of the killing or injury and who can testify thereto.”

Sections 5840 and 5841 provide two classes of claims for loss or injury to live stock which may be presented to township trustees, viz:

1. The claim of any "owner of horses, sheep, cattle, swine, mules and goats which have been injured or killed by a dog not belonging to him or harbored on his premises."

2. The claim of any owner of horses, sheep, cattle, swine, mules and goats which have been injured or killed by (a) a dog not "*kept or harbored on the owner's premises*" or (b) a dog, which if *kept or harbored* on the owner's premises, *was duly registered and was "destroyed within forty-eight hours from the time of the discovery of the fact that the injury was so caused."*

Section 5842 provides:

"The township trustees shall receive any other information or testimony that will enable them *to determine the value of the horses, sheep, cattle, swine, mules and goats so killed or injured.*" (Italics the writer's)

Section 5843 relates to the requirements relative to a claim for death or injury to registered stock, and provides in part that:

" * * * If such animals killed or injured are the offspring of registered stock and eligible to register, the registry papers showing the breeding of such offspring shall be filed with the trustees, *who shall allow the actual value of such offspring* for breeding purposes * * * and may receive affidavits or any other evidence bearing on the subject, that will assist them *in determining the true value thereof* * * *." (Italics the writer's)

Section 5844 provides:

"The township trustees shall hear such claims in the order of their filing and may allow them in full or such parts thereof as the testimony shows to be just. They shall endorse the amount allowed on each claim and transmit their findings with the testimony so taken and the fees due witnesses in each case over their official signatures, to the county commissioners in care of the county auditor, who shall enter each claim so reported upon a book to be kept for that purpose in the order of their receipt."

Section 5845 relates to witness fees and mileage and authorizes the filing of such a claim by a tenant or employe of the owner.

Section 5846 provides in part as follows:

"The county commissioners at the next regular meeting after such claims have been submitted as provided in the preceding sections shall examine same and may hear additional testimony or receive additional affidavits in regard thereto and may allow the amount previously determined by the township trustees or a part thereof, or any amount in addition thereto as they may find to be just, to be paid out of the fund created by the registration of dogs and dog kennels and known as the dog and kennel fund."

Section 5847 requires county commissioners to furnish blank forms for filing claims.

Section 5848 permits an appeal to the Probate Court by any owner not satisfied with a final allowance made by the commissioners. Section 5849 relates to the proceedings in Probate Court in such a case and provides in part as follows:

"The Probate Court shall hear such proceedings as in equity and *determine the value of the horses, sheep, cattle, swine, mules and goats killed or injured.* * * * The amount found by such court shall be final * * *." (Italics the writer's)

Section 5850 provides:

"No amount shall be so allowed by the county commissioners or Probate Court for a head of registered sheep or lambs, eligible to registry, in excess of thirty dollars."

From an examination of these sections of the General Code it will be noted that the object of these statutes and the theory upon which they are based is that compensation or reparation to the extent of the value of the stock, if killed, or to the extent of the damage suffered by the stock, if injured, shall be made to the owner of live stock killed or injured by the attack of dogs. It was not the intent of the legislature and it is not so expressed that such owner should be compensated for *all* expenditures he may have incurred as a result of a dog's attack but only for the actual loss of or injury to the live stock itself.

Throughout these sections of the General Code the language used is "*value of the horses, sheep, cattle, swine, mules and goats killed or injured,*" and not damage to the owner or pecuniary loss by him sustained.

Section 5840 provides that any owner of stock may present a detailed statement "*of such loss or injury done,*" the section further providing that the statement shall set forth the *kind, grade, quality and value of the stock,* which statement "shall be supported by the testimony of at least two freeholders *who viewed the results of the killing or injury.*" Section 5842 specifically says that the township trustees shall receive information that will enable them "*to determine the value*" of the stock so killed or injured. Section 5843 provides that if the animals killed or injured are the offspring of registered stock and eligible to register, the trustees "shall allow *the actual value* of such offspring for breeding purposes." Section 5849, relating to the jurisdiction of the Probate Court on appeal, provides that the court shall hear such proceedings as in equity and "*determine the value*" of the stock killed or injured and that the amount found by such court shall be final. And Section 5850 expressly says that no amount shall be allowed for a head of registered sheep or lambs "in excess of thirty dollars." From these various provisions it seems plain that the legislature contemplated only reimbursement to the extent of the value of the stock, if killed, or to the amount of the damage done to the stock, if injured.

It will be noted that the provisions of Section 5851, General Code, relating to the reimbursement of a person injured by a mad dog or other animal are much different. This section reads in part as follows:

"A person bitten or injured by a dog, cat or other animal afflicted with rabies, if such injury has caused him to employ medical or surgical treatment or required the expenditure of money, within four months after such injury and at a regular meeting of the county commissioners

of the county where such injury was received, may present an itemized account of the expenses incurred and amount paid by him for medical and surgical attendance, verified by his own affidavit or that of his attending physician; * * *

thus making specific provisions for the allowance of expenses incurred for medical and surgical attendance.

The rule that statutory boards, being creatures of statute, can exercise only such powers as are expressly granted by statute and such as are necessarily implied to carry the powers expressly granted into effect, is especially applicable with reference to the county's financial affairs. Such boards represent the county in respect to its financial affairs only so far as authority is given to them by statute. Public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, which can only be disbursed by clear authority of law. To this effect see *State, ex rel. Smith vs. Maharry*, 97 O. S. 272. As stated in the third paragraph of the syllabus in the case of *State, ex rel. vs. Pierce*, 96 O. S. 44:

"In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power."

The statutes under consideration are to be interpreted by the aid of all the ordinary rules of construction of statutes with the cardinal object in view of ascertaining the intent of the legislature. The scope of the statutes cannot be extended to include matters other than those which are clearly described and therein provided for; nor can the terms of the statutes be enlarged to permit the inclusion, within claims that may be allowed, of matters or items other than those specifically authorized by the sections under consideration.

In view of the foregoing, and answering your question specifically, I am of the opinion that under the provisions of Sections 5840, et seq., of the General Code, when a claim is presented by an owner of horses, sheep, cattle, swine, mules and goats which have been injured or killed by a dog, township trustees and county commissioners can allow only the *value* of such live stock, if killed, or the amount of the damage to the stock, if injured. An item for veterinary expense incurred in an unsuccessful attempt to save such animals after they were bitten by a dog, although an element of pecuniary loss sustained by such owner, is not a proper element to be considered in fixing such value or damage.

I desire to call your attention to the fact that House Bill No. 164, passed by the 87th General Assembly on April 21, 1927, amended various sections of the General Code, including Sections 5840 and 5846, *supra*, which act will become effective August 10, 1927. Such amendments are, however, in respect to matters which are in no way pertinent to the subject matter of this opinion and do not in any wise affect the conclusions herein reached.

For your information, I am enclosing herewith a recent opinion of this office, being Opinion No. 560, dated June 2, 1927, Opinions, Attorney General, 1927, which reviews the legislative history of these sections of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.