

in Section 2293-25, General Code, for the levying of a tax beyond the period during which such notes are to run, which period can never be longer than two years, there can be no source of revenue for the discharge of said notes beyond said two year period. In other words, under the state of facts which you have submitted, there would be no source of revenue during the third year, that is, the year following the maximum maturity of such notes from which funds could be obtained to pay said notes.

For the foregoing reasons, it is my opinion that where a board of education wishes to issue notes in anticipation of an issue of bonds, which notes are to be allowed to stand unredeemed for the period for which said bonds are to run, without actually issuing said bonds, the issue of such notes would be unauthorized and illegal.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1220.

DOG WARDEN—COMPENSATION—MAY BE APPROPRIATED FROM
DOG AND KENNEL FUND BY COUNTY COMMISSIONERS—LIMIT
OF APPROPRIATION.

SYLLABUS:

A board of county commissioners has authority to provide by appropriation from the dog and kennel fund collected prior to August 10, 1927, the effective date of H. B. No. 164, (112 O. L. 347) for the purpose of compensating a county dog warden or deputies. The amount of money which such board may lawfully appropriate for such purpose is a matter within its discretion; but in no event may such board appropriate more than fifty per cent of the gross receipts of such fund, not more than three-tenths of which amount so appropriated may be expended by the county auditor for registration tags, blanks, records and clerk hire.

COLUMBUS, OHIO, October 31, 1927.

HON. ISAAC E. STUBBS, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

“I would like to have your opinion as to whether the County Commissioners can appropriate sufficient funds out of the dog and kennel fund already collected and on hands before the taking effect of the new dog law, for the purpose of paying the salary or compensation to a county dog warden.

You will realize that practically all of the funds in the dog and kennel fund have been collected under the old law, and the point that is bothering me is as to whether or not we have a right to take a part of those funds for paying the dog warden's salary for the balance of this year, or before the funds have been collected under the new law.”

Prior to August 10, 1927, the effective date of H. B. No. 164, passed by the 87th General Assembly (112 O. L. 347), Sections 5652-12 and 5652-13, General Code, read as follows:

Sec. 5652-12. "All funds received by the sheriff or pound keeper in connection with the administration of this act (G. C. Sections 5652, et seq.), shall be deposited in the county treasury and placed to the credit of the dog and kennel fund."

Sec. 5652-13. "*The registration fees provided for in this act (G. C. 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.*" (Italics the writer's.)

Section 5652-13, supra, was construed in a former opinion of this department, which appears in Vol. II, Opinions, Attorney General, 1919, at page 1448, the syllabus of which reads 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."

In the opinion it was said as follows:

"A broad general survey of the provisions for application of the dog and kennel fund as provided in the original act and the amendments thereto as embodied in the sections noted, discloses that it is to be appropriated to the payment of the expenses incident to the administration of the dog registration law; the payment of claims for injuries or loss occasioned to animals by dogs; the support of humane societies and to the uses of the county board of education. * * *"

You will note that the language used in Section 5652-13, supra, viz.: "The registration fees provided for in this act 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" was not changed by the recent amendment of said section.

By that I mean the character of the fund is the same now as before the amendment, the only change being in regard to the purposes for which it may be used and the amount thereof that may be appropriated for such uses.

Before August 10, 1927, county commissioners were obligated to provide by appropriation from this 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 appropriation was made.

As stated on page 1453 of the opinion of 1919 of this department above referred to:

"It is contemplated that there shall be an appropriation or appropriations by the county commissioners from this special dog and kennel fund for the several administrative charges provided in carrying the law into effect, and while such appropriations in the aggregate are limited to 35 per cent of the gross receipts of the fund, yet it is made the duty of the county commissioners to provide appropriations for the various measures authorized in the administration of the law, and the duty of appropriation, as said in connection with the question considered in the previous opinions, is measured by the needs for properly carrying out the purpose of the law, subject of course to the maximum limitation of 35 per cent. So that as a practical matter, in a full observance of the various provisions of the law it will be incumbent on the board of commissioners to make separate appropriations for the several items of expense to be incurred in the administration of the dog registration law, and in accord with what has been previously said with reference to the appropriations for deputy sheriffs, the several appropriations so made have no connection whatsoever with the general fee fund or deputy and clerk hire fund maintained under favor of Sections 2980 and 2980-1, G. C."

It is true that prior to August 10, 1927, the dog registration act did not contemplate a county dog warden or deputy dog wardens. The duties cast by the new law upon such officers were performed by deputy sheriffs specially employed as necessary to enforce the provisions of the act. Until the effective date of H. B. No. 164 (112 O. L. 347), Section 5652-8, General Code, provided that "county commissioners shall provide for the employment of deputy sheriffs necessary to enforce the provisions of this act."

Section 5652-7, General Code, now provides "county commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation, as such county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs, and the payment of compensation for damages to live stock inflicted by dogs."

Although the style of the officer upon whom the enforcement of the law depends has been changed, the character and uses and purposes of the dog and kennel fund is the same now as before the amendment. In other words it is still a special fund to be accumulated from the registration fees, fines, costs, etc., accruing under the provisions of the dog registration act, and clearly is to be maintained as a special and independent fund for the several uses therein enumerated.

The compensation of county dog wardens and deputies, as provided for in H. B. No. 164 (112 O. L. 347) is as much an element of expense incident to the administration of said dog registration law as was the salary of deputy sheriffs specially employed for such work under the former provisions of such law.

Your attention is directed to the increased amount which a board of county commissioners may appropriate out of the dog and kennel fund for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs.

Section 5652-13, now reads as follows:

"The registration fees provided for in this act 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, also paying the compensation of county dog wardens, deputies, pound keeper and other employees 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. 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 50% of the gross receipts of said dog and kennel fund in any calendar year, not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs in accordance with the provisions of Section 5652 and, supplemental sections of the General Code."

This section became effective August 10, 1927, and provides what per cent of such fund may be appropriated for the several uses for which such fund is constituted.

Answering your question specifically it is my opinion that a board of county commissioners has authority to provide by appropriation from the dog and kennel fund collected prior to August 10, 1927, the effective date of H. B. No. 164 (112 O. L. 347), for the purpose of compensating a county dog warden or deputies. The amount of money which such board may lawfully appropriate for such purpose is a matter within its discretion; but in no event may such board appropriate more than fifty per cent of the gross receipts of such fund, not more than three-tenths of which amount so appropriated may be expended by the county auditor for registration tags, blanks, records and clerk hire.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1221.

COUNTY TREASURER—BURGLARY INSURANCE—FORMER OPINIONS
NUMBERS 527 AND 555 CONSIDERED AND APPROVED.

SYLLABUS:

Opinions Nos. 527 and 555 considered and approved.

COLUMBUS, OHIO, October 31, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication as follows:

"Referring to your Opinion No. 527, rendered under date of May 24, 1927, in which you hold that county commissioners may not legally pay for burg-