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FOXES—NEITHER COUNTY COMMISSIONERS NOR TOWNSHIP TRUSTEES HAVE ANY LEGAL AUTHORITY TO APPROPRIATE MONEY TO PAY BOUNTIES FOR KILLING OF FOXES—REGARDLESS OF DAMAGE INFLICTED ON WILD GAME OR DOMESTIC ANIMALS AND POULTRY.

SYLLABUS:

Neither county commissioners nor township trustees have any legal authority to appropriate money for the purpose of paying bounties for the killing of foxes, regardless of the damage that they may be causing to wild game or to domestic animals and poultry.

Columbus, Ohio December 28, 1944

Hon. Charles Varner, Prosecuting Attorney
Ottawa, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Information has come to me through the County Commissioners and various other sources that both red and gray foxes have become very numerous in Putnam County, and to such an extent that they are doing a great deal of damage to wild life, such as pheasants, quail and also to domestic animals and poultry. The Commissioners also advise that in some nearby counties the county is paying a bounty of five dollars on each fox destroyed. I am unable to find any reference to foxes in the statutes referring to pests and in those statutes referring to bounties that may be paid for the destruction of various pests such as ground-hogs, etc. However, as it is very evident that the foxes in this county have become so numerous that it appears that they could be readily classified as pests, I wish to inquire of you whether in your opinion it would be legal for the County Commissioners or the Township Trustees to appropriate money for the purpose of paying bounties for the destruction of foxes. Inasmuch as it seems to be very urgent that these foxes be destroyed, I would like to have your opinion at the very earliest date.”

Upon an examination of the statutes, I find no provision whatever authorizing either county commissioners or township trustees to pay a bounty for the killing of foxes. There are statutes relative to bounties for killing certain pests, but they are limited to those specifically named.

Section 5825 General Code, provides a bounty of 10c for the scalp of each woodchuck or ground-hog killed between the first day of March and the first day of November. Section 5827 General Code, provides for a bounty of 20c per dozen for English sparrows killed at any time. Section 1410 General Code, formerly provided a bounty for the killing of hawks and owls, but that section was repealed in 115 O. L. 275.

Section 1410-1 General Code, authorizes a bounty of 25c for the killing of crows. Aside from these provisions I find no statute authorizing bounties for the killing of pests.

Foxes appear to have been given some protection by the statutes. Section 1396 General Code, as amended by the 94th General Assembly provides that red foxes may only be taken during the open season — November 15th to January 15th. The same section provides that there shall be no closed season on gray foxes.

It is evident that the situation which you present can only be dealt with by legislation. It is a well settled rule that statutory officers and boards have only such powers as the legislature has seen fit to grant them. This proposition is stated in the frequently quoted case of State, ex rel. Locher v, Menning, 95 O. S. 97, 99, as follows:

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

Therefore, in specific answer to your question it is my opinion that neither the county commissioners nor the township trustees have any legal authority to appropriate money for the purpose of paying bounties for the killing of foxes, regardless of the damage that they may be causing to wild game or to domestic animals and poultry.

Respectfully,

THOMAS J. HERBERT
Attorney General