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1. VETERINARIAN—COUNTY COMMISSIONERS—MAY NOT DIRECTLY EMPLOY A VETERINARIAN—FULL TIME OR PART TIME — “COUNTY VETERINARIAN” — BOVINE TUBERCULOSIS AND BRUCELLOSIS WORK—SALARY—FUNDS APPROPRIATED UNDER SECTIONS 1121-17, 1108-5 G. C.
2. STATE DEPARTMENT OF AGRICULTURE—MAY AUTHORIZE EMPLOYMENT OF VETERINARIAN—FULL TIME OR PART TIME DUTY—ERADICATION OF BANG’S DISEASE AND BOVINE TUBERCULOSIS — COMPENSATION PAID FROM FUNDS APPROPRIATED BY COUNTY COMMISSIONERS.

## SYLLABUS:

1. County commissioners may not directly employ, either on a full time or part time basis, a veterinarian, to be known as a “county veterinarian” to do bovine tuberculosis and brucellosis work in said county, such veterinarian to be paid a salary from funds appropriated under authority of Sections 1121-17 and 1108-5, General Code.

2. When the state department of agriculture determines that the need therefor exists such department may authorize employment of a veterinarian for full time or part time duty within a county in a program of eradication of Bang’s disease and bovine tuberculosis, the compensation of such veterinarian being paid from funds appropriated by the county commissioners of such county under authority of Sections 1121-17 and 1108-5, General Code.

Columbus, Ohio, December 13, 1950

Hon. J. L. MacDonald, Prosecuting Attorney,  
Columbiana County, Lisbon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your opinion is respectfully requested on questions involving the application and interpretation of Sections 1121-17 and 1108-5 of the General Code of Ohio.

“Section 1121-17 of the General Code authorizes and empowers the county commissioners to make such appropriation from the general funds of their county as will enable them to cooperate effectively with the cattle owners, the department of agri-

culture, and the United States bureau of animal industry in the eradication of tuberculosis. The money so appropriated to be placed in a fund to be used in the county in which it originated, subject to the approval of the department of agriculture.

"The last paragraph of Section 1108-5 of the General Code authorizes and empowers the county commissioners to make such appropriation from the general funds of their county as will enable them to co-operate effectively with the cattle owners, the department of agriculture, and the United States bureau of animal industry in the control and eradication of brucellosis. The money so appropriated to be placed in a fund to be used in the county in which it originated, subject to the approval of the department of agriculture.

"The following questions are presented:

1. Can the county commissioners legally employ on a full time basis a veterinarian, to be known as the 'county veterinarian' to do tuberculosis and brucellosis work in the county, said county veterinarian to be paid an annual salary from funds appropriated under Sections 1121-17 and 1108-5 of the General Code?
2. If no authority exists for the employment by the county commissioners of a full time 'county veterinarian,' could the county commissioners legally employ a *part* time county veterinarian, said veterinarian to be compensated on an hourly, daily or monthly basis, such compensation to be paid from funds appropriated under Sections 1121-17 and 1108-5 of the General Code?"

The question here presented being primarily one of the authority of the county to exercise a particular power, it is first appropriate to observe the limitations generally on the functions and powers of counties as subdivisions of the state. In 11 O. Jur. 244, Counties, Section 7, it is said:

"Generally speaking, the function of the county is to serve as an agency or instrumentality of the state for purposes of political organization and local administration, through which the legislature may perform its duties in this regard more understandingly, efficiently, and conveniently than it could if acting directly. As such agency, the county is a creature in the hands of its creator, subject to be molded and fashioned as the ever-varying exigencies of the state may require. Except as restricted by the state Constitution, the power of the legislature, through which the sovereignty of the state is represented and exercised, over counties, is supreme, and that body may exercise plenary power with reference to county affairs, county property, and county funds. Counties, therefore, possess only such powers and privileges as may be delegated to, or conferred upon, them by statute. \* \* \* "

Our problem thus becomes one of examination of the statutes concerned to ascertain whether the action described in your inquiry falls within the authority conferred thereby on counties.

Section 1121-1, et seq., General Code, provides generally for the administration of tuberculin tests to cattle, the segregation and care of diseased animals, the destruction of diseased animals, compensation to the owner for the loss incurred thereby, and for general health measures designated to prevent the spread of this disease. All of these measures are to be provided through the co-operation of the state department of agriculture, the county commissioners, the owners of cattle herds, and local veterinarians. The specific statutory authority for participation of the county commissioners in the program to eradicate this disease is stated in Section 1121-17, General Code, which reads as follows:

“The county commissioners in their respective counties are hereby authorized and empowered to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the cattle owners, the department of agriculture, and the United States bureau of animal industry in the eradication of tuberculosis. The money so appropriated shall be placed in a fund to be used in the county in which it originated, subject to the approval of the department of agriculture.”

The language of this section is so broad and general that we may readily conclude that funds so appropriated may be expended for any materials, supplies, equipment and services which can reasonably be supposed to contribute to the objectives of the Act as a whole through the program of action authorized by the Act; provided, of course, that such funds are expended on a program within the county which supplied them and that the expenditures have the approval of the department of agriculture. More specifically, I conclude that such funds may be expended, as above indicated, in payment for the services of veterinarians.

In this connection, however, the statute makes certain specific provisions relating to veterinary service.

Section 1121-5, General Code, reads in part as follows:

“Whenever the department of agriculture has evidence to believe that tuberculosis exists in a herd of cattle, the department may detail an authorized agent or agents to enter upon the premises of the owner and quarantine the animal or animals exposed and suspected of being diseased. The department of agriculture may send a veterinarian authorized or employed by said depart-

ment and make or cause to be made a tuberculin test of such animals, and if any are found diseased they shall be disposed of as provided in section 1121-8 of the General Code. \* \* \*

Section 1121-15, General Code, reads as follows:

“The department of agriculture may employ for a temporary period such veterinary service as deemed necessary for the purpose of carrying out the provisions of sections 1121-1 to 1121-25 of the General Code, subject to the appropriations made available by the general assembly, provided no one shall be employed under this section for more than six months in any one year.”

Thus, while it appears that the department of agriculture is authorized to employ, to the extent that state funds are available, such veterinary service as may be necessary for temporary periods, and is empowered to detail “a veterinarian authorized \* \* \* by said department” to make tuberculin tests, nothing in the Act confers authority on the county commissioners either to employ such personnel or to authorize their participation in such program. Accordingly, when it is considered that funds supplied by the county, although available to pay for veterinary service, may not be expended except with the approval of the department of agriculture, the plain implication is that it is the legislative intent that veterinary personnel utilized in the tuberculin control program should either (a) be employed by the department of agriculture for temporary periods through the use of state appropriated funds, or (b) be authorized by the department to participate in this program and paid through the use of county funds. There is the further implication in these two sections (Sections 1121-5 and 1121-15, General Code) that the county commissioners are not authorized to provide for the compensation of veterinary personnel except such as are “authorized” by the department of agriculture and then only with the approval of the department of agriculture.

The use of county funds to pay the salaries and expenses of personnel designated by the department of agriculture in the execution of the testing program under this Act is, of course, entirely proper. See, *State, ex rel. Honeyman vs. Commissioners*, 119 O. S. 624.

Turning now to Section 1108-1, et seq., General Code, we find that this Act provides generally for a program for the eradication of Bang's disease (brucellosis) through the co-operation of the department of agriculture, county commissioners, owners of cattle herds and local veterinarians.

Section 1108-5, General Code, provides in part that "the department of agriculture shall then authorize \* \* \* the assignment of one or more veterinarians to the county or township for the purpose of applying a Bang's disease test. \* \* \* "

This section further provides in part:

"Whenever ninety per cent of the dairy and breeding cattle of a county or township or of the entire state have been brucellosis tested, the department of agriculture, may through its authorized veterinarians, enter the premises where the remaining ten per cent are kept and test all dairy and breeding cattle and order the reactors identified and quarantined, excepting those animals that have been treated with a brucella biologic in accordance with section 1108-20 of the General Code or regulations pertaining thereto.  
\* \* \*

"The county commissioners in their respective counties are hereby authorized and empowered to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the cattle owners, the department of agriculture, and the U. S. bureau of animal industry, in the control and eradication of brucellosis. The money so appropriated shall be placed in a fund to be used in the county in which it originated, subject to the approval of the department of agriculture."

Here again, although the department of agriculture is specifically empowered to participate in the testing program through its *authorized* veterinarians, the county commissioners are given no such specific authority; and funds supplied by the county must be expended subject to the approval of the department of agriculture.

Accordingly, I conclude that there is no statutory authority for county commissioners to employ directly a veterinarian, either on full time or part time basis to do brucellosis work in the county. There is, however, the plain implication in the statute that county funds may be expended to defray the salaries and expenses of veterinarians who are "authorized" by the department of agriculture, provided the approval of the department is first obtained.

For these reasons, I conclude that although no statutory authority exists for the direct employment of veterinary personnel by the county commissioners to carry on the work of either the tuberculosis or brucellosis program, it is entirely proper, where the need is sufficient and continuing, for the department of agriculture to authorize the participation of a veterinarian for full or part time duty within a county with the compensa-

tion of such personnel being paid from funds appropriated by the county commissioners under authority of Sections 1121-17 and 1108-5, General Code. Such action would be merely the extension to a permanent basis of what is now carried on as an intermittent program and such extension is, I think, fully authorized by statute and is dependent only on a determination by the department of agriculture that the need for it exists.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. County commissioners may not directly employ, either on a full time or part time basis, a veterinarian, to be known as a "county veterinarian" to do bovine tuberculosis and brucellosis work in said county, such veterinarian to be paid a salary from funds appropriated under authority of Sections 1121-17 and 1108-5, General Code.

2. When the state department of agriculture determines that the need therefor exists such department may authorize employment of a veterinarian for full time or part time duly within a county in a program of eradication of Bang's disease and bovine tuberculosis, the compensation of such veterinarian being paid from funds appropriated by the county commissioners of such county under authority of Sections 1121-17 and 1108-5, General Code.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.