

executed by the Conservation Council pursuant to the authority of Section 472-1, General Code, and that the same is in conformity with the provisions of said section and of other sections of the General Code, relating to leases of this kind.

Said lease is accordingly hereby approved by me as to legality and form and I have endorsed my approval upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2935.

AGENT OF HUMANE SOCIETY—APPOINTMENT—PROBATE JUDGE HAS NO AUTHORITY TO LIMIT HIS APPROVAL OF SUCH APPOINTMENT AS TO TIME—HOW COMPENSATION PAID WHEN JUDGE GIVES ONLY QUALIFIED APPROVAL.

SYLLABUS:

A probate judge has no authority to limit his approval of the appointment of an agent of a humane society to a definite term. When such a qualified approval is given, compensation may be paid to the agent by the county under the provisions of Section 10072 General Code, until the humane society terminates the appointment of such agent.

COLUMBUS, OHIO, February 11, 1931.

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

GENTLEMEN:—Your letter of recent date contains a request for my opinion upon the following:

“When under the provisions of section 10070 G. C., a humane society appoints an agent for the county and such appointment is approved by the Probate Judge for one year—

Question: Does such action of the probate judge limit the time for which such agent may be paid compensation by the county under the provisions of section 10072 G. C., or may the compensation be legally paid after one year?”

Section 10070, General Code, to which you refer, contains the following language:

“Such societies may appoint agents who are residents of the county or municipality for which the appointment is made, for the purpose of prosecuting any persons guilty of an act of cruelty to persons or animals who may arrest any person found violating any provision of this chapter, or any other law for protecting persons or animals or preventing acts of cruelty thereto. Upon making such arrest, such agent shall convey the person so arrested before some court or magistrate having jurisdiction of

the offense, and there forthwith make complaint on oath or affirmation of the offense."

It is to be noted that since the section above quoted does not provide a fixed term for which an agent may be appointed by a humane society, the term of such appointment is at the pleasure of the appointing authority. An opinion of the Attorney General found in the Opinions of the Attorney General, 1910, page 891, holds that an appointment authorized to be made for a term not limited is at the pleasure of the appointing authority.

Section 10071, General Code, relating to the approval by the probate judge of the appointment of an agent by the humane society, and Section 10072, General Code, which relates to the salary of said agent, do not disclose any authority vested in the probate judge to alter or limit his approval of said appointment. The probate judge is merely given the discretion to determine whether or not public necessity requires the appointment. *State ex rel. v. Ashman*, 90 O. S. 200. And once his approval is given, his power with reference thereto is at an end. *Opinions of the Attorney General*, 1929, page 1176.

Having determined that the power of approval of the probate judge of the appointment of an agent by a humane society vests the judge with the option of sanctioning officially or of disapproving the appointment submitted to him, the question arises as to whether or not the action of the probate judge in qualifying his approval of such appointment amounts to an approval or disapproval of the appointment.

In the instant case, the probate judge recognized the necessity of such appointment when he gave his qualified approval for a considerable period of time beyond which it would be difficult to ascertain the then existing conditions.

Since the year's limitation which he placed upon his approval was not authorized by the statutes and probate judges have only such powers as are conferred by the Constitution and laws of Ohio, I am of the opinion that the action of the probate judge amounted to an approval of the appointment and that the attempted restriction should be treated as surplusage and disregarded.

In view of the foregoing, it is my opinion that a probate judge has no authority to limit his approval of the appointment of an agent of a humane society to a definite term. When such a qualified approval is given, compensation may be paid to the agent by the county under the provisions of Section 10072, General Code, until the humane society terminates the appointment of such agent.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2936.

APPROVAL, LEASE TO OHIO CANAL LANDS AT AKRON, OHIO, FOR RAILROAD WAREHOUSE AND GENERAL RAILROAD BUSINESS PURPOSES—BALTIMORE AND OHIO RAILROAD COMPANY.

COLUMBUS, OHIO, February 11, 1931.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain canal land lease in triplicate executed by the State of Ohio, through you as superin-