

1353.

APPROVAL, BONDS OF SHAWNEE SCHOOL DISTRICT, ALLEN COUNTY, OHIO—\$9,000.00.

COLUMBUS, OHIO, December 13, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1354.

DOG AND KENNEL FUND— CLAIMS IN CURRENT YEAR PAID FIRST— CLAIMS ALLOWED IN FORMER YEARS MAY BE PAID OUT OF SURPLUS—SECTION 5652-7a, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *Section 5652-7a, General Code, is applicable only when, in any year, there is not sufficient money in the dog and kennel fund, after paying the expenses of administration, to pay the claims allowed for live stock injured or destroyed by dogs during that year.*

2. *Claims allowed in former years but unpaid cannot be considered as a basis for determining whether or not a deficit exists in the dog and kennel fund in any current year. Such claims can be paid only when a surplus exists in the dog and kennel fund after the expenses of administration and the claims allowed for such current year have been paid.*

COLUMBUS, OHIO, December 14, 1927.

HON. LISLE M. WEAVER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter dated December 8, 1927, which reads as follows:

“I would like to have your opinion with respect to the following:

Under the provisions of the recently enacted House Bill No. 164, Section 5652-7a provides that the license for the ensuing year on dogs would be fixed at such an amount that when multiplied by the number of licenses issued during the *previous* year the product will equal the aggregate claims for injured and destroyed livestock, etc. This bill went into effect the past summer and the commissioners of this county are arranging to fix the amount of the license fee for 1928.

In 1926 under the old law there was a shortage in the dog fund in the amount of \$2,687.54. On August 10, 1926, there was \$1,921.85 applied in the fund, leaving a shortage of \$765.69. Therefore, the commissioners are short the last above designated sum for 1926.

In fixing the aggregate amount for the 1928 license tax for dogs, in view of the above section, the commissioners are at a loss to know whether or not they would be allowed to apply this shortage for 1926 to the amounts paid out

for 1927 and use the total aggregate sum in fixing the license fee for 1928. The above section says 'previous year' and the question is, can the commissioners apply only that amount of 1927 or can they add that shortage for 1926? In the event the shortage for 1926 cannot be applied, then that amount will have to remain as a shortage and remain unpaid.

There seems to be no specific provision in the new law relative to such an existing condition to take care of the change from the old law into the new, and of course, this question confronts the commissioners whether or not they might include the shortage for 1926. I do not know whether or not you have rendered an opinion in this matter, but in either event would you kindly consider the matter as expedient as possible because it will soon be time to fix the rate of taxation in order to issue the license tags for 1928."

The question that you present was considered in a recent opinion of this department, being Opinion No. 1351, dated December 12, 1927, Opinions, Attorney General for 1927, the second and third paragraphs of the syllabus of which read as follows:

"2. Section 5652-7a, General Code, is applicable only when, in any year, there is not sufficient money in the dog and kennel fund, after paying the expenses of administration, to pay the claims allowed for live stock injured or destroyed by dogs during that year.

3. Claims allowed in former years but unpaid cannot be considered as a basis for determining whether or not a deficit exists in the dog and kennel fund in any current year. Such claims can be paid only when a surplus exists in the dog and kennel fund after the expenses of administration and the claims allowed for such current year have been paid."

The above opinion, a copy of which I am herein enclosing, is determinative of the question which you present.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1355.

DOG AND KENNEL FUND—COUNTY COMMISSIONERS AUTHORIZED TO EXPEND SURPLUS FOR PAYMENT OF CLAIMS ALLOWED IN PRIOR YEARS BUT NOT PAID.

SYLLABUS:

By the provisions of House Bill No. 164 (112 v. 347), a board of county commissioners is authorized to expend a surplus remaining in the dog and kennel fund at the close of the year 1927 for the payment of claims heretofore allowed but unpaid regardless of the year in which such claims were allowed. Such claims should be paid in full in the order in which they have been allowed in so far as such surplus permits.

COLUMBUS, OHIO, December 14, 1927.

HON. W. S. PAXSON, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter dated December 7, 1927, which reads as follows: