

494

VETERINARY EXPENSES—COUNTY COMMISSIONERS NOT AUTHORIZED TO PAY EXPENSES INCURRED IN SUCCESSFUL TREATMENT OF FARM ANIMALS BITTEN BY RABID DOG—SECTION 5840 ET SEQ., G. C.—O.A.G. 666, 1927, PAGE 1127 APPROVED AND FOLLOWED.

SYLLABUS:

County commissioners are not authorized to pay veterinary expenses under Section 5840 et seq. of the General Code, when such expenses have been incurred in the successful treatment of farm animals bitten by a rabid dog. (Opinion of the Attorney General No. 666, 1927, approved and followed.)

Columbus, Ohio, May 13, 1949

Hon. Howard C. Eley, Prosecuting Attorney
Darke County, Greenville, Ohio

Dear Sir:

Your request for my opinion is as follows:

“The Commissioners of Darke County ask an interpretation of your office upon General Code Section 5840, on the following set of facts:

“A dog afflicted with rabies, bit several farm animals. A veterinary was called, who immediately treated the animals and saved them. A claim was submitted for the veterinary fees. The claim is just, as the dog was killed, and it had the rabies.

“Are the commissioners authorized under Section 5840, General Code, to pay the veterinary expenses? In 1927 Opinion No. 666, page 1127, the Attorney General has ruled that the owner is not entitled to veterinary expense when the treatment is unsuccessful and the animals die, in that the statute limits recovery to the value of the animal, and an addition of the veterinary fee would be in excess of the legal limitation. On the other hand, it would appear that if treatment was successful, the veterinary fee would be a loss to the owner, as contemplated under General Code Section 5840, and he could recover this cost upon making proper claim as long as the fee does not exceed the value of the animal, which value he would have to prove in the manner prescribed.

“Before the commissioners allow the claim, they desire a ruling as to its legality.”

The opinion mentioned in your request is Opinion No. 666 of the Attorney General issued in 1927. The reasoning in that opinion rests on a construction of Section 5840 et seq. of the General Code, as it existed at that time. In my opinion, Section 5840 et seq. as it exists today, is subject to the same construction as it was in 1927. The only important changes have been the addition of the words:

“* * * domestic fowls or poultry having an aggregate value of ten dollars or more * * *.”

and changes in the procedural steps to follow:

Section 5840 General Code, as it exists today, reads as follows:

“Any owner of horses, sheep, cattle, swine, mules, goats and domestic fowls or poultry having an aggregate value of ten dollars or more which have been injured or killed by a dog not belonging to him or harbored on his premises, in order to be entitled to enter a claim for damages must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered, and such commissioner shall immediately notify the dog warden or other enforcing officer of such loss or injury, whose duty it shall be to have the facts of such loss or injury investigated at once. The owner of such horses, sheep, cattle, swine, mules, goats, or domestic fowls or poultry having a value of ten dollars or more, may present to the township trustees of the township in which such loss or injury occurred, within sixty days a detailed statement of such loss or injury done, supported by his affidavit that it is a true account of such loss or injury. A duplicate of such statement shall be presented to the county commissioners of the county in which such loss or injury occurred. If such statements are not filed within sixty days after the discovery of such loss and injury no compensation shall be made therefor. Such statement shall set forth the kind, grade, quality, and value of the horses, sheep, cattle, swine, mules, goats and domestic fowls or poultry having a value of ten dollars or more so killed or injured, and the nature and amount of the loss or injury complained of, the place where such loss or injury occurred, and all other facts in the possession of the claimant which would enable the dog warden to fix the responsibility for such loss or injury. Statements of the nature and amount of the loss or injury complained of shall be supported by the testimony of at least two freeholders who viewed the results of the killing or injury and who can testify thereto.”

As in 1927, Sections 5840 and 5841, General Code, provide two classes of claims for loss or injury to livestock which may be presented to the township trustees, viz.:

“(1) That the loss or injury complained of was not caused in whole or in part by a dog or dogs kept or harbored on the owner’s premises, or ;

“(2) If the dog or dogs causing such loss or injury were kept or harbored on such owner’s premises, that such dog or dogs were duly registered and that they were destroyed within forty-eight hours from the time of the discovery of the fact that the injury was so caused.”

Section 5842 General Code, reads the same as it did in 1927, with the addition of the bracketed part, viz. :

“The township trustees shall receive any other information or testimony that will enable them *to determine the value of the horses, sheep, cattle, swine, mules, goats (and domestic fowls or poultry having a value of ten dollars or more) so killed or injured.*”
(Emphasis mine.)

Section 5843 General Code, relates, as it did in 1927, to a claim for death or injury to registered stock, and provides in part, that :

“* * * If such animals killed or injured are the offspring of registered stock and eligible to register, the registry papers showing the breeding of such offspring shall be filed with the trustees *who shall allow the actual value of such offspring* for breeding purposes and may receive affidavits or any other evidence bearing on the subject, that will assist them *in determining the true value thereof.* * * *”
(Emphasis mine.)

Section 5844 General Code, is the same today as in 1927 :

“The township trustees shall hear such claims in the order of their filing and may allow them in full or such parts thereof as the testimony shows to be just. They shall endorse the amount allowed on each claim and transmit their findings with the testimony so taken and the fees due witnesses in each case over their official signatures, to the county commissioners in care of the county auditor, who shall enter each claim so reported upon a book to be kept for that purpose in the order of their receipt.”

Section 5845 General Code, relates to witness fees and mileage and authorizes the filing of such a claim by a tenant or employe of the owner. The 1927 act was substantially the same.

Section 5846 General Code, as in 1927, provides in part as follows :

“The county commissioners at the next regular meeting after such claims have been submitted as provided in the preceding sections shall examine same and may hear additional testimony or receive additional affidavits in regard thereto and may allow the amount previously determined by the township trustees or a part thereof, or any amount in addition thereto as they may find to be just, to be paid out of the fund created by the registration of dogs and dog kennels and known as the dog and kennel fund.
* * *”

Section 5847 General Code, requires county commissioners to furnish blank forms for filing claims. The 1927 statute was the same.

Section 5848 General Code, permits as it did in 1927, an appeal to the probate court by any owner not satisfied with a final allowance made by the commissioners. Section 5849 General Code, relates to the proceeding in Probate Court in such a case. The proceeding is the same as in 1927. Thus:

“The Probate Court shall hear such proceedings as in equity and *determine the value of the horses, sheep, cattle, swine, mules, goats (and domestic fowls or poultry killed or injured)* * * *
The amount found by such court shall be final * * *”.
(Emphasis mine.)

Section 5850 General Code, reads the same as in 1927. It places a limit upon the amount recoverable for registered sheep or lambs.

In Opinion No. 666, of Opinions of the Attorney General for 1927, mentioned in your request, it is said, at page 1130:

“From an examination of these sections of the General Code it will be noted that the object of these statutes and the theory upon which they are based is that compensation or reparation to the extent of the value of the stock, if killed, or to the extent of the damage suffered by the stock, if injured, shall be made to the owner of live stock killed or injured by the attack of dogs. It was not the intent of the legislature and it is not so expressed that such owner should be compensated for *all* expenditures he may have incurred as a result of a dog’s attack but only for the actual loss of or injury to the live stock itself.

“Throughout these sections of the General Code the language used is ‘*value of the horses, sheep, cattle, swine, mules, goats, (and domestic fowls or poultry killed or injured,*)’ and not damage to the owner or pecuniary loss by him sustained.

“Section 5840 provides that any owner of stock may present a detailed statement ‘*of such loss or injury done,*’ the section fur-

ther providing that the statement shall set forth the *kind, grade, quality and value of the stock*, which statement 'shall be supported by the testimony of at least two freeholders *who viewed the results of the killing or injury*,' Section 5842 specifically says that the township trustees shall receive information that will enable them '*to determine the value*' of the stock so killed and injured. Section 5843 provides that if the animals killed or injured are the offspring of registered stock and eligible to register, the trustees 'shall allow *the actual value* of such offspring for breeding purposes." Section 5849, relating to the jurisdiction of the Probate Court on appeal, provides that the court shall hear such proceedings as in equity and '*determine the value*' of the stock killed or injured and that the amount found by such court shall be final. And Section 5850 expressly says that no amount shall be allowed for a head of registered sheep or lambs 'in excess of thirty dollars.' From these various provisions it seems plain that the legislature contemplated only reimbursement to the extent of the value of the stock, if killed, or to the amount of the damage done to the stock, if injured.

"It will be noted that the provisions of Section 5851, General Code, relating to the reimbursement of a person injured by a mad dog or other animal are much different. This section reads in part as follows:

'A person bitten or injured by a dog, cat or other animal afflicted with rabies, if such injury has caused him to employ medical or surgical treatment or required the expenditure of money, within four months after such injury and at a regular meeting of the county commissioners of the county where such injury was received, may present an itemized account of the expenses incurred and amount paid by him for medical and surgical attendance, verified by his own affidavit or that of his attending physician; * * *'

thus making specific provisions for the allowance of expenses incurred for medical and surgical attendance.

"The rule that statutory boards, being creatures of statute, can exercise only such powers as are expressly granted by statute and such as are necessarily implied to carry the powers expressly granted into effect, is especially applicable with reference to the county's financial affairs. Such boards represent the county in respect to its financial affairs only so far as authority is given to them by statute. Public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, which can only be disbursed by clear authority of law. To this effect see *State, ex rel. Smith vs. Maharry*, 97 O. S. 272. As stated in the third paragraph of the syllabus in the case of *State, ex rel. v. Pierce*, 96 O. S. 44:

'In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.'

"The statutes under consideration are to be interpreted by the aid of all the ordinary rules of construction of statutes with the cardinal object in view of ascertaining the intent of the legislature. The scope of the statutes cannot be extended to include matters other than those which are clearly described and therein provided for; nor can the terms of the statutes be enlarged to permit the inclusion, within claims that may be allowed, of matters or items other than those specifically authorized by the sections under consideration.

"In view of the foregoing, and answering your question specifically, I am of the opinion that under the provisions of Sections 5840, et seq., of the General Code, when a claim is presented by an owner of horses, sheep, cattle, swine, mules and goats which have been injured or killed by a dog, township trustees and county commissioners can allow only the *value* of such live stock, if killed, or the amount of damage to the stock, if injured. An item for veterinary expense incurred in an unsuccessful attempt to save such animals after they were bitten by a dog, although an element of pecuniary loss sustained by such owner, is not a proper element to be considered in fixing such value or damage." (Emphasis mine.) (Parenthetical material 1943 amendment.)

In my opinion the reasoning applied in the 1927 opinion is sound and represents the law as I construe it today. Furthermore, it is my opinion that the 1927 report and the reasoning therein may be applied whether the veterinary treatment was successful or unsuccessful. I can see no reason to draw a dictinction, and it is therefore my opinion in specific answer to your question that when a dog afflicted with rabies bites farm animals and a veterinary is called who treats the animals and saves them, the county commissioners are not under Section 5840 et seq. of the General Code, permitted to pay the veterinary expenses.

Respectfully yours,

HERBERT S. DUFFY,
Attorney General.