

Sec. 1183. " * * * Such resident district deputy directors shall * * * give bond in the sum of five thousand dollars. * * * "

Sec. 1182-3. " * * * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, * * * shall be approved as to the sufficiency of the sureties by the director (of highways), and as to legality and form by the attorney general, and be deposited with the secretary of state. * * * "

(Words in parenthesis the writer's.)

Finding the above bond to have been properly executed pursuant to the above statutory provisions, I have approved the same as to form, and return it herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4457.

COUNTY COMMISSIONERS—DUTIES AS TO ALLOWANCE OF CLAIMS FOR ANIMALS INJURED OR KILLED BY DOGS DISCUSSED.

SYLLABUS:

1. *The provisions of Sections 5840 et seq., General Code, outlining the procedure to be followed in presenting claims for injuries to certain animals, caused by dogs, are all conditions precedent to the final consideration of said claims by the county commissioners.*

2. *When a claim for loss or injury to sheep, caused by a dog, has been approved by the township trustees and transmitted by them to the county commissioners, the county commissioners 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.*

COLUMBUS, OHIO, July 23, 1935.

HON. CHARLES W. LYNCH, *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

"Two questions have been presented to this office, upon which we respectfully request your opinion. The questions are:

1. Can the dog warden serve as an appraiser of sheep that have been killed by dogs?

2. Can the county commissioners reduce the value of the sheep, as determined by the appraisers, when the claim has passed the preliminary procedure and is before the county commissioners for allowance?"

In a subsequent letter you commented upon question No. 1 and stated that:

"My question is whether or not the county commissioners may disregard the affidavits of two free holders or the testimony of witnesses called by the township trustees, and base their allowance of the claim on the statement filed by the county dog warden, who has investigated the claim."

Authority for the reimbursement of the owner of stock injured or killed by a dog not belonging to him or harbored on his premises is specifically granted by Section 5846, General Code. The procedure by which such claims are presented and considered is outlined in Sections 5840, 5841, 5842, 5843, 5844, 5845 and 5846, General Code.

Section 5840, General Code, reads:

"Any owner of horses, sheep, cattle, swine, mules and goats 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 or goats, 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 and goats 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.”

Section 5841, General Code, reads:

“Before any claim shall be allowed by the trustees to the owner of such horses, sheep, cattle, swine, mules or goats, it shall be proved to the satisfaction of the trustees:

(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.

If the owner of the dog or dogs causing such loss or injury is known, it shall be the duty of the trustees to bring an action to recover such damage from the owner of said dog or dogs, if in their judgment said damage could be collected, unless it is shown to said trustees that said dog or dogs were duly registered and that they were destroyed within forty-eight hours after discovery of the fact that the loss was so caused.”

Section 5842, General Code, reads:

“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 and goats so killed or injured.”

Section 5843 is immaterial to your inquiry, but Section 5844, General Code, reads:

“The township trustees shall hear such claims in 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 order of their receipt.”

Section 5845, General Code, reads:

“Witnesses not exceeding four in number, as provided in the next preceding section, shall be allowed fifty cents each and mileage at the rate of five cents per mile, going and returning, in each case. The trustees shall administer an oath or affirmation to each claimant or witness. If the horses, sheep, cattle, swine, mules and goats killed or injured, are in the care of an employe or tenant of the owner thereof, the affidavit provided in section 5840, may be made by such employe or tenant, whose testimony may be received in regard to all matters relating thereto to which said owner would be competent to testify.”

Section 5846, General Code, reads:

“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. Such claims as are allowed in whole or in part shall be paid by voucher issued by the county auditor at the close of the following calendar month, after such claims have been finally allowed. If the funds are insufficient to pay said claims, they shall be paid in the order allowed at the close of the next calendar month in which there is sufficient funds available in said dog and kennel fund.”

Your first question is whether the county commissioners may accept the findings of the dog warden and ignore the procedure with respect to the township trustees. By careful reading of the statutes quoted supra it seems quite clear to me that the investigation of the claims and a recommendation thereon by the township trustees is a condition precedent to the approval of a claim by the county commissioners. Section 5841, General Code, recites the proof which must be adduced before the township trustees may approve a claim. May the county commissioners allow a claim which has been rejected by the township trustees? It was held in an opinion recorded in Opinions of the Attorney General for 1932, Vol. II, page 954, that:

"A board of county commissioners has no authority to allow a claim for sheep killed by dogs after the township trustees of the township in which such killing occurred have determined that such loss or injury was not so caused."

This opinion definitely recognized the necessity of investigation and commendation by the township trustees.

In an opinion to be found in Opinions of the Attorney General for 1928, Vol. III, page 1653, it was held that:

"* * * the failure of a board of county commissioners to appoint a dog warden and deputies as provided by Section 5652-7, General Code, is no bar to such board of commissioners allowing a claim for loss or injury to live stock, providing such claim was duly presented as provided by Section 5840, General Code."

In the opinion the then Attorney General said at page 1165:

"You will note that the conditions precedent to entitle any owner of the kinds of live stock enumerated in the statute, which have been injured or killed by a dog not belonging to him or harbored on his premises to enter a claim for damages are:

1. He must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.

2. He must present to the township trustees of the township in which such loss or injury occurred within sixty days after the discovery of such loss or injury a detailed statement, supported by affidavit of such loss or injury.

3. He must present a duplicate of such statement to the county commissioners of the county in which such loss or injury occurred."

In view of the statutory requirements referred to herein and in line with the former opinions of this office it is my view that the presentation of a claim to the township trustees, a determination of the validity of said claim and the value thereof by said trustees followed by the transmission of said claim with the trustees' endorsement thereon together with their findings with the testimony taken and the fees due witnesses in each case are all conditions precedent to the consideration and approval or rejection of said claims by the board of county commissioners. Having reached that conclusion it follows that the county commissioners are without authority to approve or reject a claim for injury or death to animals until and unless the procedure with respect to the

township trustees has been followed. Although it is the statutory duty of the dog warden to investigate the claim and report thereon to the county commissioners, nevertheless the statutes also clearly bring the township trustees into the picture and require that the claimant shall first obtain the approval of the trustees.

This brings us to a consideration of the statement contained in your supplemental letter as to whether the county commissioners may disregard the affidavits of two freeholders or the testimony of witnesses called by the township trustees, and base their allowance of the claim on the statement filed by the county dog warden, who has investigated the claim. As previously stated the fact that the dog warden investigates the claim does not remove the necessity for compliance with the statutory procedure in other respects. Investigation by the dog warden is required. So too are the affidavits of two freeholders; filing of the claim with the township trustees; hearing of witnesses if desired by the trustees. All of these things and more are required by the statutes and it would be illegal to approve a claim if any of them were ignored.

However, this does not mean that the county commissioners are bound to approve the value of the claim as set by the township trustees; to approve the recommendation of the dog warden; or to unqualifiedly follow the testimony of the freeholders or the witnesses. They have been granted discretionary power in the matter. While it is their duty to review the evidence, hear additional testimony if desired, and see to it that statutory procedure with respect to the claim has been followed, nevertheless, they have the final authority to allow the amount previously determined by the township trustees, any part thereof, or any amount in addition thereto, as they deem just. This view was ably expressed by a former Attorney General in an opinion reported in *Opinions of the Attorney General for 1927, Vol. II, page 931*. At page 937, he stated:

“* * * it is very apparent from a reading of Section 5846, General Code, that the board of county commissioners is not required to allow all or any part of a claim presented by a person whose stock has been killed or injured by a dog not belonging to such person. The statute provides for an examination by the board of county commissioners of the claims submitted by the township trustees and for the hearing of additional testimony or receiving additional affidavits. The fact that there is a hearing necessarily implies a discretion to be exercised by the commissioners as a result of the hearing. The terms of the statute to the effect that the commissioners ‘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’ conclusively show that the question of

making any allowance is within the discretion of the board of county commissioners, which discretion is by the terms of Section 5848 subject to review by the Probate Court."

I concur with the reasoning and conclusion reached in that opinion. Specifically answering your inquiry I am of the opinion that:

1. The provisions of Section 5840 et seq., General Code outlining the procedure to be followed in presenting claims for injuries to certain animals, caused by dogs, are all conditions precedent to the final consideration of said claims by the county commissioners.

2. When a claim for loss or injury to sheep, caused by a dog, has been approved by the township trustees and transmitted by them to the county commissioners, the county commissioners 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.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4458.

APPROVAL, BONDS OF CITY OF MINGO JUNCTION, JEFFERSON COUNTY, OHIO, \$3,500.00 (LIMITED).

COLUMBUS, OHIO, July 24, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4459.

APPROVAL. NOTES OF PEEBLES VILLAGE SCHOOL DISTRICT, ADAMS COUNTY, OHIO, \$2,230.00.

COLUMBUS, OHIO, July 24, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.