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COUNTY COMMISSIONERS—UNAUTHORIZED TO EMPLOY PHYSICIAN BY CONTRACT TO TREAT PERSONS EXPOSED TO OR INJURED BY ANIMALS AFFLICTED WITH RABIES.

SYLLABUS:

A board of county commissioners has no authority to employ by contract the county health commissioner or any other physician to treat persons living within the county who are exposed to rabies or who are injured by animals afflicted with rabies, and pay such physician out of county funds.

COLUMBUS, OHIO, March 13, 1935.

HON. EMORY F. SMITH, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The local Board of County Commissioners for the last two or three years have had to pay to various physicians considerable amount of money for administering anti-rabies serum to persons bitten by dogs afflicted with rabies or to persons exposed to such disease by coming into contact with a dog or other animal suffering from such disease. They desire to avoid this expense or a great portion thereof if possible by employing the County Health Commissioner or some other physician to treat all persons living within the county and exposed to rabies. Their inquiry presents the following proposition:

1. Does the Board of County Commissioners have authority to employ by contract the County Health Commissioner, or a physician to treat persons living within the county and exposed to rabies, and pay for such services out of the county funds?

2. If your opinion is in the affirmative, would the county be liable to other physicians who would voluntarily treat such persons, should the contract employing the County Health Commissioner or a physician have a provision therein setting forth in effect that all persons exposed to rabies should contact and be treated by a physician employed by the Board of County Commissioners, and that the Board of County Commissioners would not be responsible to any other physician or person for services in treating a person exposed to such disease.

Since this question can properly be considered one of state-wide interest, I concluded that possibly it should be submitted to your office for an opinion.”

Sections 5851 and 5852, General Code, provide in so far as pertinent as follows:
Sec. 5851.

“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, * * * .”
Sec. 5852.

“The county commissioners not later than the third regular meeting, after it is so presented, shall examine such account, and, if found in whole or part correct and just, shall order the payment thereof in whole or in part to the patient and to the physician who rendered such treatment, in accordance with

their respective claims, but a person shall not receive for one injury a sum exceeding two hundred dollars."

Reimbursement for expenses incurred and also amounts paid for medical and surgical attendance under the foregoing sections should be made from the general fund of the county. The first branch of the syllabus of an opinion of this office appearing in Opinions of the Attorney General for 1933, Vol. II, page 1472, reads as follows:

"By virtue of sections 5851 and 5852, General Code, county commissioners are required to recognize and pay from the general funds of the county claims found to be correct and just for medical and surgical expenses, including expenses for Pasteur treatment by persons who have handled animals afflicted with rabies, such persons at the time having scratches or other abrasions on their hands."

Your first question is with respect to the employment of the county health commissioner or some other physician on a contract basis to treat persons in the county exposed to rabies. I presume it is also desired to contract with such physician to treat persons injured by animals afflicted with rabies.

Considering first the authority to hire the county health commissioner on such a basis, it is observed that such commissioner is appointed by the district board of health under authority of Section 1261-19, General Code. Although a district board of health of a general health district may be coterminus with the county, such health district constitutes a branch of the state government entirely separate and distinct from the county. In an opinion of this office appearing in Opinions of the Attorney General for 1932, Vol. I, page 549, it was held as set forth in the first branch of the syllabus:

"The county commissioners have no control over the appropriation for a district health commissioner, even though the territorial limits of the health district within his jurisdiction are co-terminus with the boundaries of the county."

At page 552 of the foregoing volume, after citing and discussing the statutes relating to the financing of the activities of boards of health and the case of *Board of Health vs. Canton*, 40 O. App. 77, the then Attorney General concluded his discussion on this point in the following language:

"It is therefore apparent that a general health district is a separate and distinct department or branch of the state sovereignty and that the legislature has placed no authority, jurisdiction or control over it in the county commissioners."

It is obvious that a board of county commissioners has no authority to impose additional duties upon the county health commissioner as such, and if there is authority to contract with such commissioner as a physician, such services on his part would be outside of his duties as commissioner. I come then to the second phase of your first question,—the authority to so contract with any other physician.

The legislature has not conferred upon the board of county commissioners express authority to contract with a physician to treat those persons exposed to rabies or injured by an animal afflicted with rabies. If such power exists, it must be implied from some power expressly granted. It is well established that when a detailed method

is provided for the exercise of a power granted to public officers, that method is exclusive. This rule of construction is set forth in Lewis' Sutherland Statutory Construction, second edition, Vol. 2, pages 1135 and 1136 as follows:

"Where legislation points out specifically how an act is to be done, although without it the court or officials under their general powers would have been able to perform the act, yet as the legislature imposed a special limitation, it must be strictly pursued; and although performed by a discretionary officer, the limitation of the statute renders the doing of the act ministerial in him performing it, in which no discretion can be indulged. Enabling statutes, on the principle of *expressio unius est exclusio alterius*, impliedly prohibit any other than the statutory mode of doing the acts which they authorize. This is illustrated by the numerous cases where statutory rights and remedies are given in respect to which the statute must be strictly pursued. Where a statute in granting a new power prescribes how it shall be exercised, it can lawfully be exercised in no other way."

In the instant case, there is express provision, not for furnishing medical services by the county through some physician with whom the commissioners have contracted, but for reimbursement for expenses which they have incurred in securing the medical services of their own physicians. I believe that an application of the foregoing principle of statutory construction clearly impels a negative answer to your first question. This view is strengthened by a consideration of the fact that the courts have strictly construed legislative grants of power to boards of county commissioners. In the early case of *Treadwell vs. Commissioners*, 11 O. S. 183, in speaking of a board of county commissioners as a quasi corporation, the court said at page 190:

"The grant of power of such a corporation must be construed strictly, and when acting under a special power, it must act strictly on the conditions under which it is given."

See also Opinions of Attorney General for 1931, Vol. I, pages 129 and 498, and *Gorman vs. Heuck*, 41 O. App. 453, motion to certify overruled January 13, 1932.

Perhaps a plan for the payment of claims such as are here under consideration along the lines which you suggest would effect a saving and in that respect at least be preferable to the plan provided by the legislature, but this is, of course, a matter for the legislature and not for the courts.

It is my opinion that a board of county commissioners has no authority to employ by contract the county health commissioner or any other physician to treat persons living within the county who are exposed to rabies or who are injured by animals afflicted with rabies, and pay such physician out of county funds.

In view of this opinion, it is unnecessary to consider your second question.

Respectfully,

JOHN W. BRICKER,
Attorney General.