

1803

1. DOGS—PROCEDURE TO PREVENT CLAIMS FOR INJURIES OF CERTAIN ANIMALS CAUSED BY DOGS—CONDITIONS PRECEDENT TO FINAL CONSIDERATION OF CLAIMS BY COUNTY COMMISSIONERS—SECTION 5840 G. C., OPINIONS ATTORNEY GENERAL, 1935, OPINION 4457, page 878, APPROVED AND FOLLOWED.
2. COUNTY COMMISSIONERS — TOWNSHIP TRUSTEES — NO AUTHORITY TO ALLOW CLAIM FOR INJURY BY OWNER OF CERTAIN FARM ANIMALS CAUSED BY OWNER'S DOG.

SYLLABUS:

1. The provisions of Section 5840, General Code, outlining the procedure to be followed in presenting claims for injuries of certain animals caused by dogs are conditions precedent to the final consideration of said claims by the county commissioners. Opinions of the Attorney General for 1935, Opinion 4457, page 878, approved and followed.

2. Neither the county commissioners nor the township trustees have authority to allow a claim for injury by an owner of certain farm animals caused by the owner's dog.

Columbus, Ohio, May 25, 1950

Hon. John Rossetti, Prosecuting Attorney
Stark County, Canton, Ohio

Dear Sir:

This will acknowledge receipt of your letter which reads as follows:

"Your opinion is requested as to the interpretation to be afforded Sections 5840 and 5841 of the General Code of Ohio. A claim is presented by the owner of farm animals which have died as a result of being bitten by a dog owned by the owner of the farm animals.

"Under Section 5840, the owner of the farm animals could not recover because the injury was the result of a dog belonging to or harbored on his premises. Under Section 5841, if the dog causing the loss was kept or harbored on the owner's premises, was registered and destroyed within 48 hours, it appears that the trustees may allow the claim.

"We ask your opinion as to which of these two sections controls and as to whether or not the owner of farm animals may file a claim for injury to his stock occasioned by his own dog."

Section 5840 of the General Code provides that:

"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. Such investigating official shall have no authority to place a value, to take affidavits as to value or to influence any appraisal made on any animal killed or injured by such dog. 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."

By a careful reading of the above quoted statute, it seems quite clear that same is jurisdictional and that jurisdiction is specifically bestowed upon the township trustees. It is true that the statute provides for notice to be given to the county commissioners in order for one to be entitled to enter a claim, however, it does not say enter a claim before the county commissioners. It is also true that a duplicate of such claim must be filed with the county commissioners, but provision is made for the original to be filed with the township trustees.

In Bouvier's Law Dictionary, Student's Edition, 1934, page 622, jurisdiction is defined as:

"The power to hear and determine a cause."

Having established the question of jurisdiction, it now becomes necessary to determine who may invoke the jurisdiction of the township trustees. Section 5841, General Code, provides that:

"Before any claim shall be allowed by the trustees to the owner of such horses, sheep, cattle, swine, mules, goats or domestic fowls or poultry having a value of ten dollars or more, 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."

I am unable to see how a right is granted to anyone to file a claim pursuant to Section 5841, supra. Said section provides only for the degree of proof and the evidence required to be established by the claimant if a claim is once filed. Again I must resort to Section 5840, supra, which provides that any owner of certain animals 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 may enter a claim. The question of whether one is the owner, keeper or harbinger of a dog is a question of fact to be determined by the trustees at the time of the hearing, or it may be determined by the county commissioners after the claim and evidence is submitted to them by the township trustees. However, in the instant question ownership has been admitted and I must conclude that such owner is without a justifiable claim and therefore is not entitled to present same for damages incurred. Your attention is directed to an opinion found in Opinions of the Attorney General for the year 1935, Vol. II, Opinion 4457, at page 882, in which the then Attorney General said:

"* * * 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."

In view of the foregoing, you are therefore advised that it is my opinion:

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

2. Neither the county commissioners nor the township trustees have authority to allow a claim for injury by an owner of certain farm animals caused by the owner's dog.

Respectfully,

HERBERT S. DUFFY,
Attorney General.