

4552.

ANIMALS—LOCAL BOARD OF HEALTH MAY REMOVE DEAD ANIMALS FROM STATE HIGHWAY—NO AUTHORITY TO ORDER DIRECTOR OF HIGHWAYS TO REMOVE ANIMALS.

SYLLABUS:

Disposition of dead animals on highways discussed.

COLUMBUS, OHIO, August 8, 1932.

HON. H. G. SOUTHARD, *Director of Health, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads:

“I shall be glad to have your opinion as to who is responsible for the proper disposal of bodies of dead animals found on the highways right of way.

Local boards of health are charged with the duty of abating nuisances by serving an order upon the owner of the property or person responsible for the nuisance.

There seems to be a disagreement as to whether it is the duty of the Department of Highways or the county authorities to remove and dispose of the carcasses of dead animals found on so-called state highways.

Please advise this Department as to the proper official to whom orders should be issued by the local board of health when a dead animal is found upon a state or county road.”

Section 1261-26, of the General Code, which relates to the duties of boards of health, among other things provides:

“The district board of health may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease.”

Section 1261-42, of the General Code authorizes a board of health to make such orders and regulations as it deems necessary for the public health, which have the effect of ordinances when properly enacted and advertised as required by the section. The section further provides:

“Provided, however, that in cases of emergency caused by epidemics of contagious or infectious diseases, or conditions or events endangering the public health, such boards may declare such orders and regulations to be emergency measures, and such orders and regulations shall become immediately effective without such advertising, recording and certifying.”

The foregoing sections relate to the powers of a general health district as contradistinguished from a city health district. A city health district exercises similar powers by reason of Section 1261-30, General Code, which transfers the powers of a city board of health to abate nuisances under Sections 4420, et seq., to a district board of health. Therefore, whether such a nuisance as you describe

is within a city or outside thereof is unimportant for the reason that there exists power to abate it in either instance.

In connection with your inquiry, it may be noted that the legislature has seen fit to make specific provision for the disposition of the bodies of animals which have died from contagious diseases but such statutes would not have application to your general question.

While the Director of Highways has power to maintain state highways and power to cause "obstructions" to be removed, such powers relate to the public convenience and safety as contradistinguished from health matters, and it is not believed there is any power whereby a board of health could issue an order to him to abate such a nuisance.

In answer to the specific question propounded, it is my opinion that a local board of health may take action to abate the nuisance of a dead animal on a state highway but it has no power to order another official to take action except of course a health officer or other employe under its jurisdiction.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4553.

NATIONAL GUARD—STATE EMPLOYE—ENTITLED TO LEAVE OF
ABSENCE DURING TRAINING PERIOD NOT TO EXCEED FIFTEEN
DAYS—ENTITLED TO SALARY DURING SUCH ABSENCE.

SYLLABUS:

Where a state employe regularly employed by the state is a member of the National Guard, he is entitled to leave of absence from his duties during the time he is in attendance at the field training for a period not to exceed fifteen days and he is entitled to his regular salary or compensation without deduction for such absence.

COLUMBUS, OHIO, August 8, 1932.

HON. F. D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for an opinion which reads as follows:

"Numerous inquiries have been made of this office relative to the effect of Section 5273-2, Ohio Laws, as applied to state employes who are members of the National Guard in attending field training for a period of fifteen days. Most of the inquiries are in connection with state employes who are laborers of State and County Highway Departments.

It is requested that this office be furnished with an opinion relative to the operation of the above mentioned section of Ohio Laws."

Section 5273-2, General Code, referred to in your request, reads as follows:

"All officers and employes of the state, the several counties, cities and city school districts thereof, who are members of the Ohio national guard, naval militia, or officers reserve corps, shall be entitled to leave of absence from their respective duties, without loss of pay or time, for such time as they are in military service on training duty under the