

4357.

DOG WARDEN—COUNTY COMMISSIONERS MAY NOT EXPEND COUNTY FUNDS TO PAY EXPENSES OF DOG WARDEN IN ATTENDING MEETINGS OF STATE WARDENS' ASSOCIATION.

SYLLABUS:

A board of county commissioners may not legally expend public funds to pay the expenses of a dog warden in attending the meetings of the State Dog Wardens' Association.

COLUMBUS, OHIO, June 22, 1935.

HON. RUSSELL V. MAXWELL, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion upon the following question:

“I have been requested by the Ohio State Dog Warden's Association to have you secure a ruling from the Attorney General as to whether or not the County Commissioners may pay the expenses of their dog warden attending state meetings of the dog wardens association. About half of the state examiners allow these expense bills while others turn them down.

Section 5653 of the General Code, reads in part 'after paying all the necessary expense of administering the sections of the General Code relating to the registration, license, seizing, impounding, destroying of dogs, etc.,' The question is whether this would be considered necessary expense for a dog warden to attend a meeting. The purpose of the meeting is to get uniform enforcement of the law.”

Section 5652-7, General Code, reads in part as follows:

“County commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation, as such county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs, and the payment of compensation for damages to live stock inflicted by dogs. * * *”

Section 5652-13, General Code, relative to the uses and purposes of the Dog and Kennel Fund reads as follows:

“The registration fees provided for in this act shall constitute a special fund known as the dog and kennel fund which shall be deposited by the county auditor in the county treasury daily as collected and be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets and other equipment, also paying the compensation of county dog wardens, deputies, pound keeper and other employees necessary to carry out and enforce the provisions of the laws relating to the registration of dogs, and for the payment of animal claims as provided in G. C. Sections 5840 to 5849, both inclusive, and

in accordance with the provisions of G. C. Section 5653. Provided, however, that the county commissioners by resolution shall appropriate sufficient funds out of the dog and kennel fund, said funds so appropriated not to exceed 50% of the gross receipts of said dog and kennel fund in any calendar year, not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs in accordance with the provisions of G. C. Section 5652 and, supplemental sections."

Section 5652-13, General Code, is not altogether clear and it might appear that only the compensation of the Dog Warden and not the necessary expenses may be paid from the Dog and Kennel Fund. However, in an opinion to be found in Opinions of the Attorney General for 1934, Vol. II, page 1011, I held as disclosed by the syllabus:

"County Commissioners are authorized to enter into a contract with a dog warden and agree to compensate him for gasoline and oil used by such dog warden in driving his car on official business and pay for same out of the dog and kennel fund, pursuant to the provisions of Section 5652-13 G. C."

The above opinion was based in part upon an opinion to be found in Opinions of the Attorney General for 1927, Vol. III, page 1782. The following appears at page 1784:

"It appears from the context of the last sentence of Section 5652-13, supra, that certain punctuation was omitted and it is my opinion that such section should be read as though the words 'not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire' were placed in parenthesis or other like punctuation marks used.
* * *"

Section 5653, General Code, referred to in your letter provides for the distribution of any surplus from the Dog and Kennel Fund. This section reads in part as follows:

"After paying all of the necessary expenses of administering the sections of the General Code relating to the registration, licensing, seizing, impounding and destroying of dogs and making compensation for injuries to live stock inflicted by dogs, also after paying all horse, sheep, cattle, swine, mule and goat claims * * *"

The question you raise is whether or not public funds may be expended to pay the expenses of a Dog Warden in attending a state meeting of the Dog Wardens' Association. The answer to this question would, of course, depend upon whether or not the attendance at such meeting is necessary for the seizing, impounding and destroying of dogs within the county for which the Dog Warden is appointed. In your letter you state that the purpose of such meetings is to secure uniform enforcement of the law. While the end sought to be accomplished by such meetings is no doubt laudable it is nevertheless necessary to find legal authority for such an expenditure. It is a well established rule of law that a Board of County Commissioners being a public body and a creature of the legislature has only such powers as are given to them by statute and

such implied powers as are necessary to effectuate the express powers. *Peter vs. Parkinson*, 83 O. S. 36, 49; *Jones, Auditor vs. County Commissioners of Lucas County*, 57 O. S. 189. This rule is well stated by Matthias, J. in *Elder vs. Smith, Auditor*, 103 O. S. 369, 370:

"It has long been settled in this state that the board of county commissioners has such powers and jurisdiction, and only such as are conferred by statute."

In the expenditure of public funds the above rule seems to be even stricter. In the case of *State, ex rel. Bentley vs. Pierce*, 96 O. S. 44, it was held as disclosed by the third branch of the syllabus:

"3. 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."

Questions relating to the payment of traveling and other expenses incurred by public officers in connection with their official duties have frequently been under consideration by this office. Without reviewing the former opinions on this subject it is sufficient to say for present purposes that it is generally held that where expenses are incurred by a public official in the performance of his duties for which no provision is made by statute, the officer may lawfully be reimbursed provided the incurring of the expenses was necessary in the performance of his public duties.

This office has in certain cases held that public officials might be paid their necessary expenses in traveling to Columbus on business of the political subdivisions they represent. See Opinions of the Attorney General for 1929, Vol. IV, page 2681; Opinions of the Attorney General for 1930, Vol. I, page 587. However, in these opinions as well as in others it was pointed out that such traveling was necessary to the proper administration of the public officials' duties. Each case must rest upon its own peculiar facts and it is obvious that categorical rules relative to this question may not be laid down.

In the instant case the purpose is no doubt as already pointed out a worthy one. However, there is considerable doubt as to it being essential or necessary to the duties of the dog warden to attend such meeting. In view of this doubt, following the principle laid down by the Supreme Court in the *Pierce* case supra, the question must be resolved against the expenditure.

In view of the above and without extending this discussion it is my opinion that a board of county commissioners may not legally expend public funds to pay the expenses of a dog warden in attending the meetings of the State Dog Wardens' Association.

Respectfully,

JOHN W. BRICKER,

Attorney General.