

of Section 5841, General Code, it appears that the claims which Section 5844, General Code, authorizes the county commissioners to allow in whole or in part are those claims of loss which have been proven to the satisfaction of the township trustees, as provided in Section 5841, General Code, to have been caused by dogs, and the allowance of such claims in whole or in part refers to the extent of the loss or injury to the animal or animals.

This construction of Section 5844, General Code, when applied to the latter part of Section 5846, General Code, relative to the endorsing of amounts allowed on each claim and the transmitting of the findings of the township trustees with the testimony so taken and the fees due witnesses in each case over their official signature, to the county commissioners, results in the transmitting of only those claims allowed in whole or in part by such township trustees and consequently totally disallowed claims are not to be transmitted to the county commissioners.

This conclusion is strengthened by a consideration of Section 5846, General Code, which authorizes the county commissioners, after review of such claims and the hearing of additional testimony or the receiving of additional affidavits, if any, in regard thereto, to allow the *amount* previously determined by the township trustees, a part thereof or any amount in addition, as they may find to be just.

Then again Section 5848, General Code, allows an appeal from the *allowance* made by the commissioners to the probate court of the county, in which action "the probate court shall hear such proceedings as in equity and determine the value of the horses, etc., killed or injured * * ." "The amount found by such court shall be final and the judge thereof shall certify it to the county commissioners * * *." (Section 5849, General Code)

In view of the foregoing and in specific answer to your inquiry, I am of the opinion 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.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4559.

BOARD OF ACCOUNTANCY—FEES TO BE PAID INTO STATE TREASURY—AUDITOR OF STATE MAY PRESCRIBE FORM OF VOUCHER—MEMBERS OF BOARD ENTITLED TO TRAVELING EXPENSES NOT TO EXCEED \$5.00 PER DIEM.

SYLLABUS:

1. *Fees collected by the State Board of Accountancy should be paid into the state treasury as provided in Section 24, General Code.*
2. *The Auditor of State has the authority to prescribe the form of voucher to be submitted by public officers, such as members of the State Board of Accountancy.*
3. *Members of the State Board of Accountancy are entitled to be paid necessary traveling expenses, and each member of such board may be allowed by the board for his services an amount commensurate with the time actually expended in such services, not to exceed five dollars per day.*

COLUMBUS, OHIO, August 10, 1932.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion which reads:

“In a recent examination of the State Board of Accountancy the records disclose the following:

(1). That said board does not pay into the State Treasury fees received by it, in compliance with Section 24 G. C.

We are familiar with Opinion No. 1307 rendered by Attorney General Timothy S. Hogan, on December 21, 1914, in which it was held that the fees collected by the Board of Accountancy should be paid into the State Treasury, however, some question has presented itself at this time as to the meaning of Section 1378 G. C., which reads in part as follows:

‘From the fees collected under this chapter, the *board shall pay* the expenses incident to its examination * * *.’

Is it within the meaning of Section 1378 G. C. that the Board of Accountancy shall actually pay the expenses incident to its examinations by drawing its check on funds at hand, or that the Board of Accountancy shall deposit all fees, coming into its hands, in the State Treasury in compliance with Section 24, G. C., and in order to pay the expenses incident to its examination, the Board of Accountancy shall draw a voucher on the Auditor of State, who in turn shall draw a warrant on the State Treasurer?

(2). That said board members are paying to each member the sum of \$600.00 annually as compensation for services rendered, in addition other expenses, such as traveling, etc.

Section 1378 G. C. reads in part as follows:

* * * the board shall pay the expenses incident to its examination and the expenses of preparing and issuing certificates, and to each member of the board for the time actually expended in the performance of his duties a sum not exceeding five dollars per day and his necessary traveling expenses, * * *’.

The voucher upon which these annual payments were made does not show the actual days these payments cover.

Should not these vouchers itemize the actual days expenses in the performance of the duties of the board members, and also, should not these actual days be paid for at a rate of five dollars per day as provided in Section 1378 G. C.?

In connection with this another question arises as to what constitutes a day's time actually expended in the performance of his duties in relation to a member of the Board of Accountancy within the meaning of Section 1378 G. C.”

Section 24, General Code, reads in part as follows:

“On or before Monday of each week every state officer, state institution, department, board, commission, college, normal school or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such state officer, state institution, department, board, commis-

sion, college, normal school or university, receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise, and file with the auditor of state a detailed, verified statement of such receipts. * * *
Section 1378, General Code, provides:

"From fees collected under this chapter the board shall pay the expenses incident to its examinations and the expenses of preparing and issuing certificates, and to each member of the board for the time actually expended in the performance of his duties a sum not exceeding five dollars per day and his necessary traveling expenses. In no case shall the expenses of the board or the compensation or traveling expenses of the members thereof be a charge against any fund of the state."

In answer to your first inquiry, your attention is called to an opinion of the Attorney General found in 1928 Opinions of the Attorney General, 1946, the first branch of the syllabus of which reads as follows:

"State officers, whether functioning independently or as members of boards, commissions, or other departments of the state government, who fail to comply substantially with the provisions of Section 24, General Code, which requires such state officers to pay to the treasurer of state, on or before Monday of each week, all moneys, checks and drafts received for the state or for the use of any such state officer, state institution, department, board or commission, are liable to the state for the damages sustained by it by way of loss of the depository interest on such funds, which would have accrued to the state had the same been deposited as required by the provisions of Section 24, General Code."

This opinion contains a general discussion of the subject under examination.

The syllabus of the 1914 opinion, to which you refer, is as follows:

"Section 1378, General Code, allowing the state board of accountancy to pay the expenses and compensation of the members from its own receipts, has been repealed by implication in so far as its provisions conflict with the amendment to section 24, of the General Code, which requires the board to pay its receipts weekly into the state treasury:

Upon consideration of the 1914 opinion and the 1928 opinion, above mentioned, I am of the opinion that fees collected by the State Board of Accountancy should be paid into the state treasury in compliance with Section 24, General Code.

It should be noted that the 89th General Assembly appropriated from the State Board of Accountancy fund for salaries, wages, etc., the sum of \$1,900.00. See Amended Substitute Senate Bill No. 1.

Coming now to your second inquiry as to the power of the auditor's office to require the vouchers upon which payments for the various services enumerated in Section 1378, General Code, are to be made, to show the actual days these payments cover, your attention is called to Section 277, General Code, relative to the duties of the Auditor of State, which reads as follows:

"The auditor of state, as chief inspector and supervisor, shall prescribe and require the installation of a system of accounting and reporting for the public offices, named in section two hundred seventy-four. Such system shall be uniform in its application to offices of the same grade and accounts of the same class, and shall prescribe the form of receipt, vouchers and documents, required to separate and verify each transaction, and forms of reports and statements required for the administration of such offices or for the information of the public."

See also 1920 Opinions of the Attorney General, 232.
Section 274, General Code, reads in part as follows:

"There shall be a bureau of inspection and supervision of public offices in the department of auditor of state which shall have power as hereinafter provided in sections two hundred seventy-five to two hundred eighty-nine, inclusive, to inspect and supervise the accounts and reports of all state offices, including every state educational, benevolent, penal and reformatory institution, public institution and the offices of each taxing district or public institution in the state of Ohio. Said bureau shall have the power to examine the accounts of every private institution, association, board or corporation receiving public money for its use and purpose, and may require of them annual reports in such form as it may prescribe. * * *"

From a consideration of the powers and duties of the members of the State Board of Accountancy (Sections 1370 to 1380, General Code, inclusive), there is no doubt but that such members hold public offices, within the meaning of Section 274, above quoted, and it follows that under the provisions of Section 277, supra, the Auditor of State has the power to prescribe the form of vouchers to verify each transaction to be submitted by such board.

Section 1378, General Code, specifically sets forth the manner in which the per diem compensation of the members of such board is to be paid and it is apparent that such provisions should be followed.

Coming now to your last question relative to the interpretation of the words "* * the board shall pay * * to each member of the board for the time actually expended in the performance of his duties a sum not exceeding five dollars per day."

An examination of this language compels the conclusion that a member may be allowed by the board for his services an amount commensurate with the time actually expended in such services, but not to exceed five dollars per day. In my opinion the legislature intended that the word "day" in such section be given its usual meaning, that is, a twenty-four hour period commencing at twelve P. M. and ending at twelve P. M. (See 17 C. J. 1131.)

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that

1. Fees collected by the State Board of Accountancy should be paid into the state treasury as provided by Section 24, General Code.
2. The Auditor of State has the authority to prescribe the form of voucher to be submitted by public officers, such as members of the State Board of Accountancy.

3. Members of the State Board of Accountancy are entitled to be paid necessary traveling expenses, and each member of such board may be allowed by the board for his services an amount commensurate with the time actually expended in such services, not to exceed five dollars per day.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4560.

JUSTICE OF PEACE—FORMATION OF NEW TOWNSHIP—NUMBER TO
 BE ELECTED DETERMINED BY SECTION 1712, G. C.

SYLLABUS:

Upon the formation of a new township the number of justices of the peace for such township shall be determined and elected in the manner provided by section 1712, General Code.

COLUMBUS, OHIO, August 10, 1932.

HON. CAMERON MEACHAM, *Prosecuting Attorney, Portsmouth, Ohio.*

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

“Under Sections 3244 et seq. the City of New Boston has been separated from Clay Township of which it was formerly a part, and the City of New Boston has been formed into a separate Township called New Boston Township. Three Justices of the Peace elected by Clay Township reside within the limits of New Boston City and also New Boston Township.

The 1928 O. A. G. No. 2008 and Section 3512 of the General Code of Ohio did not quite appear to be in agreement. I am therefore requesting an opinion from you as to how Justices of the Peace in New Boston Township shall be selected, whether under Section 3259 of the General Code of Ohio or selected by the City Council of New Boston as Section 3512 might seem to indicate.”

Section 3512, General Code, reads in part as follows:

“When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employes. Such justices and constables shall be elected at municipal elections.”

From an examination of the above section, it is apparent that it is applicable to those instances in which the corporate limits of a city or village are extended and become identical with those of a township in which are existing township offices.

Section 3259, General Code, provides:

“When a new township is set off, the county commissioners shall forthwith give at least ten days public notice by advertisement, in three public places in such township, of the time and place of holding an elec-