

evidenced by my approval endorsed upon the transcript and upon the duplicate copy thereof, both of which are herewith returned to you.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5841.

COUNTY COMMISSIONERS—UNAUTHORIZED TO ALLOW  
CLAIMS FOR DAMAGES TO CHICKENS CAUSED BY  
DOGS.

*SYLLABUS:*

*County commissioners are unauthorized to allow a claim for damages for the injury or killing of chickens by a dog, under the provisions of sections 5840 et seq., General Code.*

COLUMBUS, OHIO, July 15, 1936.

HON. G. L. SCHILLING, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR: This acknowledges receipt of your letter of recent date in which you request my opinion on the following:

“The Clinton County commissioners have requested from my office an opinion relative to a claim made to them for the payment of the loss of eighty (80) chickens occasioned by the attack of a dog.

Section 5840 provides for compensation for the loss or injury to horses, sheep, cattle, swine, mules and goats, but omits domestic fowl.

The opinion of my office to the Board of County Commissioners was to the effect that they must necessarily decline the claim for the payment of the loss of said domestic fowl in view of the fact that Section 5840 omits domestic fowl.

And furthermore in view of the fact that laws governing boards of county commissioners, and other similar boards, must be strictly construed, and the powers of said boards are limited to the provisions of the statute.

Will you kindly advise me if your interpretation of the law relative to this question agrees with my interpretation?”

As you suggest in your communication, section 5840 and following sections of the General Code, provide procedure for the payment of damages by county commissioners to the owner of "horses, sheep, cattle, swine, mules and goats" which have been injured or killed by a dog not belonging to him or harbored on his premises.

In 1910, when the present General Code was adopted, sections 5840 et seq., General Code, provided procedure for the payment by county commissioners of damages to a person where his "*sheep*" only were killed or injured by a dog. Such had been the status of the law for years previous thereto.

These sections were amended and revised generally in 1917 to read as they now do (see 107 O. L., 537-539).

In other words, prior to 1917, damages for loss were allowed for "sheep" only, and in that year the legislature saw fit to extend the one class of animals for which such damage for loss was allowed, to the other enumerated classes of animals, namely, "horses, cattle, swine, mules and goats."

From this history it would seem that the legislature by enumerating in detail, as it did in 1917, the specific classes of animals, did not intend that there should be damages allowed for loss of animals not included therein.

Webster's Twentieth Century Dictionary defines the terms "cattle" and "swine" as:

Cattle—"Beasts or quadrupeds in general that serve for agricultural or other labor, and for food to man. In its primary sense, the word includes horses, asses, all the varieties of domesticated horned beasts of the bovine genus, sheep of all kinds, camels, goats, and perhaps swine. In this general sense it is constantly used in the Scriptures."

Swine—"Any hoglike ungulate (a hoofed quadruped) not chewing the cud; generally used collectively." (Words in parenthesis mine)

Obviously such terms "cattle" and "swine" do not include "poultry" or "chickens" and "domesticated fowls."

The principle known as *expressio unius est exclusio alterius*—meaning, the mention of one thing implies the exclusion of another thing, would appear to have direct application here to show that the legislature did not intend the class of animals "chickens" or domestic fowls" or "poultry" to be included. The courts of Ohio have several times approved this principle of statutory construction. See Vol. 37 Ohio Jurisprudence, 555, Section 295, citing, among other cases, Cincinnati v. Roet-

tinger, 105 O. S., 145; Devine v. State ex rel., Tucker, 105 O. S., 288; Madjorous v. State, 113 O. S., 427, and Curtis v. State, 108 O. S., 292.

That it was the intention of the legislature that poultry, including chickens and other domesticated fowls, should not be included in sections 5840 et seq., is further fortified by a reference to House Bill No. 248 of the regular session of the 91st General Assembly. The House Journal for such session (1933) shows on page 195 that House Bill No. 248 (Mr. Kirkpatrick), was introduced on February 14, 1935, entitled "To amend section 5838, 5840, 5841, 5842, 5843, 5845, 5848 and 5849 of the General Code, relative to animals killed or injured by dogs." An examination of such bill as introduced shows that the only proposed change in such sections was the insertion of the word "turkeys" after the word "sheep" in the phrase "horses, sheep, cattle, swine, mules and goats", appearing in such statutes.

The House Journal, at page 618, shows that this bill was passed by the House of Representatives in the original form as introduced on February 14, 1935, and the Senate Journal, at page 624, shows that said bill was reported out recommended for passage by the Senate Committee on Agriculture on May 14, 1935, in the form in which it was introduced in the House and passed by the House.

When the 91st General Assembly adjourned its regular session *sine die* on May 23, 1935, such bill had not reached a vote in the senate, and therefore it failed of passage.

Such legislative history shows conclusively that the legislature did not consider that the phrase in present sections 5840 et seq., General Code, viz., "horses, sheep, cattle, swine, mules and goats," included "poultry" and "chickens", or domesticated fowls, as the definition of "poultry" includes "turkeys."

If the legislature had considered that the phrase "horses, sheep," etc., included poultry, chickens and domesticated fowls, it would have been unnecessary to attempt to amend the sections to include turkeys. For Webster's Twentieth Century Dictionary defines the term "poultry" as:

"Domestic fowls which are propagated and fattened for the table, and for their eggs, feathers, etc., such as chickens, turkeys, ducks, guinea fowls, and geese."

Thus, turkeys are in the same classification as chickens, which are defined as "poultry" or "domestic fowls."

Hence, it seems clear that the legislature did not intend that the present sections 5840 et seq., General Code, should include "poultry" and "chickens" or "domestic fowls."

I am therefore of the opinion that county commissioners are un-

authorized to allow a claim for damages for the injury or killing of chickens by a dog, under the provisions of sections 5840 et seq., General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5842.

APPROVAL—BONDS OF CITY OF YOUNGSTOWN, MAHON-  
ING COUNTY, OHIO, \$238,000.00.

COLUMBUS, OHIO, July 15, 1936.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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5843.

APPROVAL—BONDS OF LUCAS COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, July 15, 1936.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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5844.

APPROVAL—BONDS OF CUYAHOGA COUNTY, OHIO, \$100,000.

COLUMBUS, OHIO, July 15, 1936.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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5845.

APPROVAL—BONDS OF CITY OF EUCLID, CUYAHOGA  
COUNTY, OHIO, \$15,000.00.

COLUMBUS, OHIO, July 15, 1936.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*