

1609.

COUNTY COMMISSIONERS—CLAIMS BY PERSONS BITTEN OR INJURED BY DOG—ANIMAL MUST BE AFFLICTED WITH RABIES—“PROXIMATE CAUSE”—PAYMENT LIMITED TO \$200.00.

SYLLABUS:

1. *A board of county commissioners is without authority to order the payment of a claim presented by a person bitten or injured by a dog, cat or other animal unless such animal was afflicted with rabies.*

2. *Under the provisions of Sections 5851 and 5852, General Code, a board of county commissioners may allow claims, within the limit of \$200.00 fixed by said Section 5852, presented in instances where the claimant has been exposed to rabies by reason of coming in contact with a dog, cat or other animal afflicted with rabies.*

3. *Under the provisions of Sections 5851 and 5852, General Code, a board of county commissioners may allow claims presented by the person injured, within the limit of \$200.00 fixed by said Section 5852, where the dog or other animal afflicted with rabies is the “proximate” cause of the injury received, irrespective of the nature of the injury.*

COLUMBUS, OHIO, January 21, 1928.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—This will acknowledge your letter dated January 13, 1928, which reads:

“I would very much appreciate your opinion upon the following questions, which involve the construction of Section 5851, G. C.

a. A person was attacked and bitten by a dog. A physician was called and as a preventative and protective measure, administered the anti-rabic treatment. The dog was confined and kept under observation for six weeks, but did not develop rabies.

QUESTION: May the board of county commissioners legally pay an itemized account of the expenses incurred by said person so injured, when presented to said board properly verified by his own affidavit and that of the attending physician?

b. Several persons were playing with a dog, but none of them were attacked, bitten or injured by said dog. On the same day the dog became vicious, but before anyone was bitten or injured, said dog was killed, and a subsequent report showed that the dog was suffering from rabies. As a preventative and protective measure, the anti-rabic treatment was administered by the attending physician to the several persons who had petted said dog.

QUESTION: May the board of county commissioners legally pay itemized accounts of the expenses of the persons to whom such treatments were administered, properly verified by them and the attending physician?

c. A person was attacked and bitten by a dog, which a later report disclosed was suffering from rabies. Upon being so attacked, the person fell and broke her arm. A physician administered the anti-rabic treatment, and also attended her for the broken arm.

QUESTION: May the board of county commissioners legally pay an itemized account of the expenses incurred by said person including the ex-

penses of medical attention for the broken arm, when an itemized account of such expenses so incurred for medical and surgical attention is presented to said board, properly verified?"

In considering the questions that you present it must be borne in mind that a board of county commissioners, being a creature of statute, can exercise only such powers as are expressly given by statute or necessarily implied from the powers so expressly given. See *State ex rel. vs. Commissioners*, 8 O. N. P. (N. S.) 281; *State ex rel. vs. Yeatman*, 22 O. S. 546; *Ireton vs. State ex rel.* 12 O. C. C. (N. S.) 202, (affirmed without opinion, *Ireton vs. State*, 81 O. S. 562).

As stated by the Supreme Court in the opinion in the case of *Elder vs. Smith, Auditor, et al.*, 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."

The constitution of Ohio, Article X, Section 5, provides: "No money shall be drawn from any county or township treasury, except by authority of law."

With reference to the power of county commissioners in financial transactions, the Supreme Court of Ohio in the case of *State ex rel. Locher vs. Menning, et al.*, 95 O. S. 97, at page 99, said as follows:

"The legal principal is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

The question that you present involves consideration of Sections 5851 and 5852, General Code, which provide:

Sec. 5851. "A person bitten or injured by a dog, cat or other animal afflicted with rabies, if such injury has caused him to employ medical or surgical treatment or required the expenditure of money, within four months after such injury and at a regular meeting of the county commissioners of the county where such injury was received, may present an itemized account of the expense incurred and amount paid by him for medical and surgical attendance, verified by his own affidavit and that of his attending physician; or the administrator or executor of a deceased person may present such claim and make such affidavit. If the person so bitten is a minor such affidavit may be made by his parent or guardian."

Sec. 5852. "The county commissioners not later than the third regular meeting, after it is so presented, shall examine such account, and, if found in whole or part correct and just, shall order the payment thereof in whole or in part to the patient and to the physician who rendered such treatment, in accordance with their respective claims, but a person shall not receive for one injury a sum exceeding two hundred dollars."

The provisions of law, whereby county commissioners are authorized to expend public funds in payment for medical or surgical services, incurred in the treatment of

persons who have been bitten or injured by dogs, are those contained in Sections 5851 and 5852, *supra*. As provided by Section 5851, *supra*, only such persons, as are bitten or injured by "a dog, cat or other animal *afflicted with rabies*" when such injury has caused him to employ medical or surgical treatment or required the expenditure of money, may present claims therefor and as provided by Section 5852, *supra*, only *such* claims may be allowed and paid by the county commissioners.

In considering your second question your attention is directed to a former opinion of this office which appears in Opinions, Attorney General for 1926, at page 491. The syllabus thereof reads as follows:

"Under Section 5851 of the General Code the county commissioners may allow claims presented in instances where the person making this claim has been exposed to inoculation by reason of coming in contact with a dog, cat or other animal afflicted with rabies."

This opinion was rendered in response to the following inquiry:

"There were a number of people bitten, scratched by or 'exposed' to a dog with rabies.

The physician who renders his assigned claim for persons thus exposed insists that good medical judgment prompted Pasteur Treatment in each case, the 'exposure' consisting in most instances in children coming in contact with a dog which had rabies, with its attendant danger of inoculation by means of saliva of the dog getting into their body through cuts or scratches upon their body.

The question is, can county commissioners pay the medical expenses in such cases?"

After quoting Section 5851, General Code, as it then read, it was said as follows:

"The use of the words in this section 'bitten or injured by a dog, cat or other animal afflicted with rabies' would indicate that the injury could occur from other than a bite by such animal. The purpose of this section is to make available Pasteur or other similar treatment to persons who would otherwise be financially unable to secure such treatment. As such treatment must be given immediately after being subject to inoculation for rabies and as it is impossible to tell for some time afterwards whether a person is inoculated with the germs of such diseases, it is apparent in cases where there may be inoculation by reason of exposure that the same should be treated the same as for persons bitten or scratched by an animal afflicted with rabies. A person may thereby be injured by an animal afflicted with rabies without being bitten or scratched. The fact that by use of the Pasteur treatment no injury is thereafter apparent, would not in itself take such cases without the statute. You are therefore advised that county commissioners may under Section 5851 of the General Code, allow claims presented in instances where the person making such claim has been exposed to inoculation by reason of coming in contact with a dog, cat or other animal afflicted with rabies."

Although this opinion construed Section 5851, *supra*, before its amendment by the 87th General Assembly, (112 v. 343), the reasoning thereof and the conclusion therein reached are pertinent in determining the second question you asked in your letter. I agree with the conclusions thereof and your second question is answered in the affirmative.

With reference to your third question, your attention is directed to the language of Section 5851, supra, to the effect that

"a person bitten *or injured* by a dog, cat or other animal afflicted with rabies if *such injury* has caused him to employ *medical or surgical treatment or required the expenditure of money* within four months after *such injury* and at a regular meeting of the county commissioners of the county where such injury was received, may present an itemized account of the expenses incurred and amounts paid by him for *medical and surgical attendance* * * * If the person so bitten *or injured* is a minor, such affidavit may be made by his parent or guardian." (Italics the writer's.)

This section was first enacted on March 29, 1904 (97 v. 68) in an act entitled "An Act—To provide for the protection of persons injured by mad dogs." The section read in part as follows:

"That any person who shall be bitten *or injured* by a dog or canine, which at the time of the biting *or injury* to said person was suffering from an affliction with what is known as rabies, and which said bite *or injury* by said dog or canine, caused said person to employ medical or surgical treatment, *and required of said person the expenditure of money in the care and treatment resulting from said bite or injury*, may present a detailed and itemized account of the actual expenses incurred and amount paid for medical and surgical attendance * * * , but if said *injured* person be a minor the said affidavit must be made by the parent of said minor or his duly appointed and qualified guardian, attending physician or administrator or executor.
* * *

The county commissioners shall * * * examine the same, and if found in whole or in part correct and just, may in their discretion order the payment thereof, or such parts as they may have found in their judgment correct and just, *to be paid out of the fund created by the per capita tax on dogs*, but no one person shall receive for any one injury under this act a sum exceeding five hundred (\$500.00) dollars." (Italics the writer's.)

This section was amended in an act passed on April 8, 1908, (99 v. 82) entitled:

"An Act—To amend Section 1 of an act, entitled, 'An act to provide for the protection of persons injured by mad dogs,' passed March 29, 1904, to provide for protection of persons injured by cats, dogs and other animals."

The amendment consisted of enlarging the terms of the statute so as to include animals generally, by adding the words "cat or feline, or other animal" after the words "dog or canine," and changing the fund from which compensation was to be made, by substituting the words "the general fund of the county" for the words "the fund created by the per capita tax on dogs." With considerable change in phraseology by the codifying commission the section was carried into the General Code as Section 5851, and the statute was not again amended until April 1, 1927 (112 v. 347).

From the legislative history it will be seen that, as originally enacted, this section provided for the payment of claims of the nature here involved from the fund now designated as the "dog and kennel fund." This fund then, as it now is, was derived from the taxes assessed against the owners of dogs. It might be said, therefore, that originally the statute made provision, somewhat in the nature of insurance, to compensate for injuries inflicted by mad dogs, the dog owners paying the cost thereof.

When the statute was amended, however, so as to embrace within its terms other kinds of animals, the legislature very properly provided that monies paid out under the provisions of the statute should come from the general fund of the county and not from the fund derived from taxes on the owners of dogs.

It will be observed that from its inception the language of the section has been substantially the same, and that injuries other than those caused by biting were provided for. In this connection your attention is directed to the language of the opinion of this department above cited, reported in Opinions, Attorney General, 1926, page 491, to the effect that "the use of the words in this section 'bitten or injured by a dog, cat or other animal afflicted with rabies,' would indicate that the injury could occur from other than a bite by such animal. * * * A person may thereby be injured by an animal afflicted with rabies without being bitten or scratched. The fact that by use of the Pasteur treatment no injury is thereafter apparent, would not in itself take such cases without the statute."

It seems to me that, from the plain terms of the statute, the county commissioners are authorized to pay the claim of any person who has suffered an injury of any kind whatsoever where an animal afflicted with rabies has directly produced or concurred directly in producing the injury. That is, payment may lawfully be made where an animal afflicted with rabies is the "proximate cause" of an injury received, irrespective of the nature of the injury, the statute speaking of "a dog, cat or other animal afflicted with rabies," and not of an *injury* caused by rabies, or an injury with which, in some way rabies is connected.

There are many definitions of the term "proximate cause," and although such definitions are differently worded, they amount practically to the same thing. In the application of these definitions by the courts, it is safe to say that "their applicability seems to have been determined by the peculiar circumstances of the case under consideration." See *Blythe vs. R. R. Co.*, 15 Colo. 333; 25 Pac. 702. The term has been many times defined by the Supreme Court of Ohio and the definition given in the syllabus in the case of *City of Piqua vs. Morris*, 98 O. S. 42, is probably as satisfactory as any. This syllabus reads:

"The proximate cause of a result is that which in a natural and continued sequence contributes to produce the result, without which it would not have happened. The fact that some other cause concurred with the negligence of a defendant in producing an injury, does not relieve him from liability unless it is shown such other cause would have produced the injury independently of defendant's negligence."

It might be contended that compensation should only be paid where treatment is given for the purpose of preventing inoculation of rabies and then only in such amount as will reimburse the person injured for his necessary outlay because of this particular treatment. It is my opinion that the language of the section does not warrant this construction. In the first place, by the very terms of the statute itself, compensation is authorized for injuries done by *animals afflicted with rabies*, nothing being contained in the statute as to the nature of the injuries. That is to say, so long as the injury is done by a mad dog or other animal so afflicted, it does not matter whether the injury sustained is such as might cause the person to be inoculated with rabies or not. This construction is fortified by the fact that the statute permits of compensation for services other than services purely medical, the statute expressly providing that allowances may be made where the injury has necessitated medical or surgical treatment or required the expenditure of money.

In the case referred to in your letter, sufficient facts are not given to enable this department to pass upon the question as to whether or not the mad dog was the

proximate cause of the injury sustained by the claimant when she fell and broke her arm, your letter only stating that "upon being so attacked, the person fell and broke her arm," and for this reason a specific answer to your third question cannot be given. Suffice it to say that, if, from the facts occurring at the time of the injury, it is determined that the injury to the arm was directly produced by the attack of the mad dog, it is my opinion that the county commissioners would be legally authorized to allow the claim in question, including expenses incurred in treating the broken arm; while, on the other hand, if the attack of the dog was not the proximate cause of such injury, such claim cannot legally be allowed.

Answering your first and second questions specifically, it is my opinion that:

1. A board of county commissioners is without authority to order the payment of a claim presented by a person bitten or injured by a dog, cat or other animal unless such animal was afflicted with rabies.

2. Under the provisions of Sections 5851 and 5852, General Code, a board of county commissioners may allow claims, within the limit of \$200.00 fixed by said Section 5852, presented in instances where the claimant has been exposed to rabies by reason of coming in contact with a dog, cat or other animal afflicted with rabies.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1610.

APPROVAL, BONDS OF ORANGE RURAL SCHOOL DISTRICT, CUYA-
HOGA COUNTY—\$125,000.00.

COLUMBUS, OHIO, January 21, 1928.

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

1611.

APPROVAL, BONDS OF THE VILLAGE OF UNIVERSITY HEIGHTS,
CUYAHOGA COUNTY, OHIO—\$129,000.00.

COLUMBUS, OHIO, January 21, 1928.

Industrial Commission of Ohio, Columbus, Ohio.