

does violence to the present interpretation of the rights of citizens under the Constitution.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

746.

COUNTY COMMISSIONERS MAY REJECT CLAIMS ALLOWED BY TOWNSHIP TRUSTEES, WHEN—MAY HEAR ADDITIONAL EVIDENCE, WHEN—DECISION FINAL, WHEN—CLAIMANT MAY APPEAL TO PROBATE COURT—COMMISSIONER MAY NOT REVERSE CLAIM ACTION OF PRIOR BOARD OF CONTROL.

SYLLABUS:

1. *The board of county commissioners may reject entirely a sheep claim allowed by township trustees under procedure set forth in Sections 5840-5847, inclusive, of the General Code, as such power is within the discretion given them by law under that statute.*

2. *When the county commissioners elect to hear additional evidence on claims, notice should be given to the claimant.*

3. *When the board of county commissioners in proper compliance with Section 5846, of the General Code, act upon a claim, their decision is final, unless the claimant appeals to the Probate Court as provided by law.*

4. *The board of county commissioners may not rescind or reverse the action on a claim taken by the prior board of county commissioners at another session.*

COLUMBUS, OHIO, June 17, 1937.

HON. NELSON CAMPBELL, *Prosecuting Attorney, Mt. Gilead, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

“R, a resident of H. township, suffered a sheep loss. Her claim was regularly presented to the Township trustees. The trustees, upon hearing, allowed the claim in the amount of \$84.00 and submitted their report to the County Auditor. In due course, the claim, together with testimony, was heard by the

commissioners. The commissioners rejected the claim on the 9th day of December, 1936, Commissioners Journal 15, page 363. No appeal was taken by R as provided by Section 5848 G. C.

Recently R, with two or three other persons appeared before the Commissioners in an effort to substantiate her claim for damages. The commissioners are inclined to rescind their former action and allow the claim if such procedure is lawful.

Queries.

1. Can the commissioners reject entirely a sheep claim allowed by trustees?
2. Must notice of hearing before, and finding of, the commissioners be given to the owner?
3. Were R's rights lost by her failure to prosecute appeal?
4. Can the commissioners now, on their own motion, re-open the case, rescind their former action and allow the claim, either in whole or in part?"

Provisions for claims against a county arising from injuries to animals may be found in Section 5840-5847, inclusive, of the General Code. These sections bearing directly upon the questions presented in your letter are as follows:

Sec. 5843. "If the horses, sheep, cattle, swine, mules and goats whose killing or injury is complained of are registered in any accepted association of registry, the registration papers shall be filed with the trustees showing the lines of breeding, age and other matters therein contained. If such animals killed or injured are the offspring of registered stock and eligible to register, the registry papers showing the breeding of such offspring shall be filed with the trustees, who shall allow the actual value of such offspring for breeding purposes and may receive affidavits or any other evidence bearing on the subject, that will assist them in determining the true value thereof. Such trustees shall determine from all the testimony, affidavits, or other evidence at their disposal, the amount of the damage to same.

Sec. 5844. "The township trustees shall hear such claims in the order of their filing and may allow them in full or such parts thereof as the testimony shows to be just. They shall endorse the amount allowed on each claim and transmit their findings with the testimony so taken and the fees due witnesses in each case over their official signatures, to the county commis-

sioners in care of the county auditor, who shall enter each claim so reported upon a book to be kept for that purpose in the order of their receipt.

Sec. 5846. "The county commissioners at the next regular meeting after such claims have been submitted as provided in the preceding sections, shall examine same and may hear additional testimony or receive additional affidavits in regard thereto and may allow the amount previously determined by the township trustees or a part thereof, or any amount in addition thereto as they may find to be just, to be paid out of the fund created by the registration of dogs and dog kennels and known as the dog and kennel fund. Such claims as are allowed in whole or in part shall be paid by voucher issued by the county auditor at the close of the following calendar month, after such claims have been finally allowed. If the funds are insufficient to pay said claims, they shall be paid in the order allowed at the close of the next calendar month in which there is sufficient funds available in said dog and kennel fund."

Under Sections 5843 and 5844, supra, the matter of establishing the facts of loss and damage is placed in the first instance with the township trustees. Section 5846, supra, deals with the matter of payment and allowance of these claims, and under this section such authority is vested with the board of county commissioners. That part of the section which reads: "The county commissioners . . . may allow the amount previously determined by the township trustees or a part thereof or any amount in addition thereto as they may find to be just", shows conclusively that the question of making an allowance is within the discretion of the board of county commissioners which discretion is by the terms of Section 5848, of the General Code, subject to a review by the Probate Court.

The investigation of a claim and a record thereon by the township trustees are conditions precedent to the approval and allowance of claims by the county commissioners. In an opinion of the Attorney General for 1935, Volume II, page 878, the following statement as to this matter of law appears:

"The presentation of a claim to the township trustees, a determination of the validity of said claim and the value thereof by said trustees, followed by the transmission of said claim with the trustees endorsement thereon together with the finding and the testimony taken and the fees due witnesses in each case, are all conditions precedent to the consideration and

approval or rejection of said claims by the board of county commissioners.”

The interpretation given in this opinion apparently authorizes county commissioners to reject entirely a claim which has been allowed by the township trustees.

Further evidence of legislative intent in this matter is contained in that part of Section 5846, *supra*, which reads:

“The county commissioners at the next regular meeting after such claims have been submitted . . . *shall examine* the same and *may hear* additional testimony . . . and *may allow* the amount previously determined by the township trustees or a part thereof, or any amount in addition thereto, as they may find to be just . . . Such claims as are allowed in whole or in part shall be paid by voucher issued by the county auditor at the close of the following calendar month” (Italics the writer’s.)

Examination of the language herein used, reveals that the mandatory word *shall* was not used in that part of the statute which provides for an allowance by the county commissioners. On the contrary, the permissive phrase “may allow” was used indicating a broad grant of discretion and judgment as to the making of an allowance, rather than a mandatory order. The use of such language clearly negatives any idea that the county commissioners have a mandatory duty to make an allowance on any claim presented them by the township trustees.

Moreover, the statute further provides that “such claims as are allowed in whole or in part shall be paid” indicating conclusively a recognition of the fact that all claims may not be allowed. A contrary understanding would necessitate the use of the word “all” instead of “such”.

Last but not least, there is an additional consideration to be borne in mind in adopting the construction adhered to in this opinion and that is that the board of county commissioners is the authority which holds the purse strings of the county and these claims are paid not from the township fund but from the county dog and kennel fund. It seems to me that it would require very clear language to justify a construction that a board of township trustees may require payment of money from county funds and deprive the county commissioners of the authority to reject a claim which in their judgment may appear to be unfounded. Moreover, it must be remembered that in the event of a rejection of a claim,

as well as in the event of a reduction of a claim, the claimants have recourse to the courts in all cases.

Accordingly, it is my opinion that the board of county commissioners in the rightful exercise of their discretion given them by statute may entirely reject a sheep claim allowed by township trustees.

Under the procedure set up in Section 5846, *supra*, the county commissioners determine claims submitted to them by the township trustees at their next regular meeting. Here they necessarily go over the entire claim as submitted to them by the township trustees and in so doing, they are under no statutory duty to notify the claimant. They are bound only by the rules and regulations governing their regular matters and unless these impose an obligation of notice to claimants, none is required. However, under the same section the county commissioners are also given power to hear additional testimony thereto, receive additional affidavits in regard to the claims. In such a circumstance, although the statute imposes no duty of notice expressly, the fact that there is a hearing necessarily implies and contemplates procedure, *inter partes* and not *ex parte*, and in such procedure, interested parties are brought in and given opportunity to be heard. It would then follow that if and when the county commissioners hear additional testimony and receive additional affidavits, the claimant is entitled to notice as to the same.

The rights given in these sections discussed are statutory rights and as such the procedure provided for in respect to them must be strictly followed. The weight of authority is to the effect that a board of county commissioners in the audit, adjustment, allowance or disallowance of a claim against a county, exercises judicial functions and has an exclusive jurisdiction, and its judgment in the absence of fraud is conclusive on both the board and the parties unless appealed from or reversed in the mode prescribed by law. (See 15 C. J., 658, Sec. 370.)

Applying this rule, it is my opinion that a decision properly made under the Code Sections, *supra*, by the county commissioners and unreversed by them is final unless the claimant as provided by law appeals to the Probate Court.

We come now to the question as to whether or not the board of county commissioners can rescind action of a former board in a past session and reconsider the case of the claimant. The law prohibiting this is well settled. In 15 C. J., 661, 372, the following statement appears:

“* * * It is a rule that the audit and allowance or disallowance of a claim is binding on the county board and its successors and it can not reconsider the claim, especially after the expiration of the term; nor has the claimant any right to have con-

sidered another claim containing the same item which is substantially the same thing.”

Also bearing on this question is the following paragraph which is in 29 Cyc., 1433:

“If the power has by law been given to an officer to determine a question of fact, his determination is final, in the absence of any controlling provision of statute, provided he has not been guilty of an abuse of discretion. Such a determination is * * * binding upon the successors in office of the officer who made it.”

In answer to your questions, as numbered, it is my opinion that:

1. The board of county commissioners may reject entirely a sheep claim allowed by township trustees under procedure set forth in Sections 5840-5847, inclusive, of the General Code, as such power is within the discretion given them by law under that statute.

2. When the county commissioners elect to hear additional evidence on claims, notice should be given to the claimant.

3. When the board of county commissioners in proper compliance with Section 5846, of the General Code, act upon a claim, their decision is final, unless the claimant appeals to the Probate Court as provided by law.

4. The board of county commissioners may not rescind or reverse the action on a claim taken by the prior board of county commissioners at another session.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

747.

DELINQUENT MUNICIPAL IMPROVEMENT ASSESSMENT—
FORECLOSURE OF STATUTORY LIEN ON TWO LOTS
OWNED BY ONE MAN—PROCEEDS OF SALE OF ONE LOT
MAY BE ASSIGNED TO OTHER LOT FOR DEFICIENCY,
WHEN—ASSESSMENT IS PERSONAL OBLIGATION.