

4557.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND DOWNING AND HETRICK, INC., COLUMBUS, OHIO, FOR CONSTRUCTION AND COMPLETION OF BOILER FEED WATER HEATING AND TREATING EQUIPMENT AT THE OHIO STATE PENITENTIARY, AT AN EXPENDITURE OF \$12,200.00—SURETY BOND EXECUTED BY THE FIDELITY AND CASUALTY COMPANY OF NEW YORK.

COLUMBUS, OHIO, August 9, 1932.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Welfare (Ohio Penitentiary), Columbus, Ohio, and Downing & Hetrick, Inc., Columbus, Ohio. This contract covers the construction and completion of Boiler Feed Water Heating and Treating Equipment complete, less boiler feed, wash water and booster pumps, for the Ohio Penitentiary, in accordance with the form of proposal dated June 10, 1932. Said contract calls for an expenditure of twelve thousand two hundred dollars (\$12,200.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also shown that the Controlling Board has approved the expenditure in accordance with section 8 of House Bill No. 624 of the 89th General Assembly. In addition, you have submitted a contract bond upon which the Fidelity and Casualty Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4558.

COUNTY COMMISSIONERS—UNAUTHORIZED TO ALLOW CLAIM FOR SHEEP KILLED BY DOGS WHERE TOWNSHIP TRUSTEES HAVE DETERMINED SUCH LOSS WAS NOT SO CAUSED.

SYLLABUS:

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.

COLUMBUS, OHIO, August 10, 1932.

HON. C. LUTHER SWAIN, *Prosecuting Attorney, Wilmington, Ohio.*

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

“A question has arisen in the interpretation of General Code Sections 5652, et seq., and 5840, et seq., with reference to the allowance of claims for sheep killed by dogs.

The specific question arises under the following facts:

A land owner of this county presented a claim to the township trustees of Union Township for some sheep which he claimed had been killed by unknown dogs. Due notice was given and the dog warden had the sheep examined by two freeholders of the township.

They found against the claim of the applicant and the trustees of the township refused to make any allowance when the claim was presented to them under G. C. Sec. 5844.

The land owner secured affidavits from other persons and presented them to the trustees and they again refused to grant any award.

The land owner then took the claim before the county commissioners and at the regular meeting on the first Monday of June the county commissioners allowed the sheep claim as filed by the land owner. The auditor has not yet written the warrant on the allowance of the county commissioners and states that he believes the county commissioners had no jurisdiction to allow such a claim. An opinion of my office was requested before the allowance of the commissioners and I cited them to the General Code sections but without specifically stating to them that they had authority to allow the claim if the trustees had refused to allow any part of it.

Certain state examiners are of the same opinion as the county auditor, i. e., that county commissioners have no authority to allow any part of the claim where the township trustees had refused to allow it. They based this opinion upon Sections 5844 and 5846, which read as follows:

5844. TRUSTEES SHALL HEAR CLAIMS IN THEIR ORDER OF FILING, OTHER DUTIES.—“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 signature, to the county commissioners 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.”

5846. PAYMENTS OUT OF DOG AND KENNEL FUND. “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.'

They claim that under General Code Section 5844 there is no provision for the filing of claims with the county auditor where the trustees have refused to allow any part of the claim as the statute reads that these claims are filed after the trustees allow them 'in full or such parts thereof as the testimony shows to be just.' Here, nothing was allowed, and, therefore, the county auditor was without authority to file the claim which had been rejected by the township trustees. They also claim that under G. C. Section 5846 the county commissioners were without authority to grant any allowance when the township trustees had rejected the same as the statute reads 'may allow the amount previously determined by the township trustees, or part thereof, or any amount in addition thereto as they may find to be just.' The township trustees having allowed nothing, the county commissioners could not allow the amount previously determined by the township trustees, neither could they allow a part thereof. And that they could not allow any amount in addition thereto under the statute, as they say this wording implies a previous finding of some sum by the township trustees.

The opinion of the Attorney General is respectfully requested upon this question as the auditor desires to know whether he should write a warrant or whether he should refuse to write a warrant on this allowance of the county commissioners."

Section 5841, General Code, which is pertinent to your inquiry, reads as follows:

"Before any claim shall be allowed by the trustees to the owner of such horses, sheep, cattle, swine, mules or goats, it shall be proved to the satisfaction of the trustees:
* * * * *

Section 5842, General Code, provides:

"The township trustees shall receive any other information or testimony that will enable them to determine the value of the horses, sheep, cattle, swine, mules and goats so killed or injured."

An examination of Sections 5841 and 5842, General Code, discloses that the township trustees, before the allowance of a claim, must first find that such animals were killed or injured by dogs, etc., and then find the value of such loss or injury.

From an examination of Section 5844, General Code, above quoted, it will be noted that apparently such section gives township trustees the power to approve such claims in whole or in part, but no authority is specifically given to reject the same. To say that all claims of the nature of the one in question presented to the township trustees must be allowed in whole or in part, would be unreasonable. Bearing in mind the provisions

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.*