"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."

No section of the General Code requires that positive proof by examination of the head of the dog be first had before a board of county commissioners may legally allow a claim otherwise properly filed. Your attention is directed to the discussion which appears in Opinion No. 1100, supra, to the effect that the allowance of such claims is discretionary with such board.

I believe the opinions above referred to answer the questions which you present.

Summarizing, and answering your questions specifically, it is my opinion that:

1. No section of the General Code, requires that positive proof, by examination of the head of a dog, that such dog had rabies must first be submitted to a board of county commissioners before such board may legally allow a claim filed as provided by Section 5851, General Code.

2. Under Section 5852, General Code, the allowance therein provided rests within the discretion of the county commissioners, who may make such reasonable requirements for the purpose of proof of the facts as they may deem necessary.

I am enclosing herewith copies of the opinions referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2290.

SLOT MACHINE—WHEN A GAMBLING DEVICE.

SYLLABUS:

A slot vending machine, which upon deposit of a five cent coin, will release a package of mints together with trade or premium checks, which checks have a cash or trade value, is a gambling device within the provisions of Sections 13056 *and* 13066, *General Code.*

COLUMBUS, OHIO, June 28, 1928.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads as follows:

"I have been requested by the sheriff of this county to give him the status of slot machines, which are being operated throughout the county. These

are of the mint vending variety, giving, in addition to a package of mints, two or more premium checks at times which are good for five cents in trade. There is, at present, much opposition to same.

I therefore request your opinion as to whether such machines, known as mint vending machines giving premium checks, and which checks are good for five cents in trade, are unlawful or otherwise.

I will be very grateful for this opinion for the guidance of our local officials in this matter."

Your attention is directed to Sections 13056 and 13066, General Code, which provide:

Sec. 13056. "Whoever permits a game to be played for gain upon or by means of a device or machine in his house or in an out house, booth, arbor or erection of which he has the care or possession, shall be fined not less than fifty dollars nor more than two hundred dollars."

Sec. 13066. "Whoever keeps or exhibits for gain or to win or gain money or other property, a gambling table, or faro or keno bank, or a gambling device or machine, or keeps or exhibits a billiard table for the purpose of gambling or allows it to be so used, shall be fined not less than fifty dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days, and shall give security in the sum of five hundred dollars for his good behavior for one year."

These sections have been construed by this office in several opinions. I refer to an opinion which appears in Vol. II, Annual Report, Attorney General for 1912, at page 1341, wherein the following question was presented:

"The question that concerns a portion of this county is: How far can a slot machine go before it is run in violation of the law? A firm has a slot machine in its place of business, a 'nickel' is placed in the machine, and in return you are liable to get five-cent chips up to as high as $2.00 in the aggregate, a person receiving at least a package of chewing gum. Does the giving of the gum prevent the machine becoming a gambling device under the statutes?"

The opinion concludes:

"It is my opinion that the giving of gum, whether equal to or less than the value of a nickel for each nickel placed in the slot of the machine, is not such an act or subterfuge as to take such machine from out of the operation of the statutes above quoted. As you suggest in your opinion, the nickel is put in to pay for the chance to get more than its value, which fact clearly brings such machine within what is termed a 'gambling device.'

There are no Ohio decisions decisive of the question as based upon the facts in your inquiry. I find upon investigation, however, that there are a number of decisions from other states which hold such machine to be a 'gambling device' where the operator of the machine in every instance receives value or something of value for the money he puts into such machine and with a chance of receiving more than the value of the money he so puts into such machine."

See also an opinion which appears in Vol. I, Opinions, Attorney General for 1920, at page 207, the syllabus of which reads:

> "The operation of a slot machine, where the player may receive trade checks ranging in value from five cents to one dollar by dropping a nickel in said machine, is a gambling device notwithstanding the player receives a package of gum with every play, and in violation of Sections 13056 and 13066, G. C."

In Opinion No. 1393, dated December 17, 1927, addressed to the Prosecuting Attorney of Vinton County, this office held:

> "1. A slot vending machine is not *per se* a gambling device since it may be used and operated for innocent purposes.
>
> 2. A slot vending machine, which upon deposit of a five cent coin, will release a package of mints together with checks, which checks are merely for the purpose of replaying the machine and having one's fortune told, and which checks have no cash or trade value, is not a gambling device within the provisions of Sections 13056 and 13066, General Code."

The last opinion above referred to contains a review of the cases in Ohio which have dealt with the question which you present. A number of recent cases in sister states are cited therein which are pertinent to the inquiry which you present. I am enclosing a copy of this opinion herewith.

Specifically answering the question that you present, I am of the opinion that a slot vending machine, which upon deposit of a five cent coin, will release a package of mints together with trade or premium checks, which checks have a cash or trade value, is a gambling device within the provisions of Sections 13056 and 13066, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2291.

AGRICULTURAL FAIRS—APPROPRIATION FOR BY COUNTY COMMISSIONERS MANDATORY.

SYLLABUS:

In so far as the funds in the county treasury will permit, having due regard for other expenditures made mandatory by statute, under the provisions of Section 9894, General Code, for the purpose of encouraging agricultural fairs, upon the request of any county or duly organized county agricultural society in such county which society owns, or holds under a lease, real estate used as a site whereon to hold fairs and has control and management of such lands and buildings, it is the duty of the county commissioners annually to appropriate from the general fund not to exceed two thousand dollars or less than fifteen hundred dollars to such county agricultural society for such purpose.

COLUMBUS, OHIO, June 28, 1928.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This will acknowledge your letter dated June 25, 1928, which reads: