

County, appearing in Opinions of the Attorney General for 1929, Vol. III, p. 1702, the second branch of the syllabus of which is as follows :

“If the federal census for the year 1930 is completed before judges and clerks of elections render their services at elections held in the year 1930, the amount of their compensation under Section 28 of said act will be governed by the population of the county according to the 1930 census.”

In view of the foregoing and in specific answer to your questions, it is my opinion that :

1. Under the provisions of Section 4785-34, General Code, there is no requirement that provision be made for registration of all qualified electors of a city having a population of less than 16,000 and more than 11,800. Such city may, however, by ordinance elect to become a registration city.

2. In the event such city should become a registration city prior to the November, 1930, election, the members and clerk of the board of elections of such county would be entitled to the additional compensation provided for counties containing a registration city as set forth in Sections 4785-18 and 4785-19, General Code, for the year 1930.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1994.

DOG WARDEN—MONEYS NOT TRANSFERABLE FROM GENERAL FUND TO DOG AND KENNEL FUND TO PAY HIS SALARY—WHAT MONEYS DERIVED FROM GENERAL TAXATION TRANSFERABLE TO LATTER FUND.

SYLLABUS:

1. *The compensation of a dog warden employed pursuant to the provisions of Section 5652-7, General Code, is payable out of the dog and kennel fund, and in the event there are insufficient moneys in such fund for the payment of such compensation, there is no authority to transfer moneys for such purpose to the dog and kennel fund from the general fund.*

2. *The only circumstances whereby moneys derived from general taxation may be used for the purposes of the dog and kennel fund are set forth in paragraph c of Section 5625-13, General Code.*

COLUMBUS, OHIO, June 16, 1930.

HON. W. S. PAXSON, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR:—Your letter of recent date is as follows :

“Among other complications caused by the closing of the Ohio State Bank of this city, which was the depository of the county funds, is one in connection with the salary of the county dog warden. He was employed by the county commissioners on a weekly salary and drew his salary from the dog and kennel fund in accordance with the provisions of Section 5652-13, General Code. The bank having closed, the commissioner, auditor and treasurer are at a loss to know how he can be paid. The commissioners are ar-

ranging to borrow \$15,000.00 under the provisions of Section 2293-4, General Code, for the payment of current expenses. In your opinion, would they have the right to transfer any of these funds to the dog and kennel fund to pay the dog warden's salary, the general fund to be reimbursed out of the dog and kennel fund when it becomes available? Will appreciate receiving any suggestions you can offer to take care of the situation.

I note that you have rendered an opinion, being No. 1238, rendered December 28, 1929, to the effect that the board of county commissioners can allow a claim for loss or injury to live stock, although the dog warden does not view the injured or killed live stock. I would appreciate receiving a copy of this opinion and if the opinion does not cover the proposition I would like to know whether or not in your opinion it is necessary that a dog warden be employed in order for the owners of damaged livestock to have their claims allowed."

Section 5652-7, General Code, provides in part as follows:

"County commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation, as such county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs, and the payment of compensation for damages to live stock inflicted by dogs.

* * * ."

Under the provisions of this section standing alone, it would seem that there is a mandatory duty imposed upon the county commissioners to employ a dog warden. Section 5652-13 provides for the payment of the compensation of dog wardens from the dog and kennel fund and sets forth the uses and purposes of such fund. It is as follows:

"The registration fees provided for in this act shall constitute a special fund known as the dog and kennel fund which shall be deposited by the county auditor in the county treasury daily as collected and be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets and other equipment, also paying the compensation of county dog wardens, deputies, pound keeper and other employees necessary to carry out and enforce the provisions of the laws relating to the registration of dogs, and for the payment of animal claims as provided in Sections 5840 to 5849, both inclusive, of the General Code, and in accordance with the provisions of Section 5653 of the General Code. Provided, however, that the county commissioners by resolution shall appropriate sufficient funds out of the dog and kennel fund, said funds so appropriated not to exceed 50% of the gross receipts of said dog and kennel fund in any calendar year, not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs in accordance with the provisions of Section 5652 and, supplemental sections of the General Code."

The foregoing sections are part of a group of sections relative to the licensing and regulation of dogs and providing for the payment of damages to live stock caused by dogs. It was obviously contemplated by the Legislature that the provisions of these sections should be enforced without the necessity of employing general taxation

money to pay the cost incident to such enforcement. Section 5846, General Code, relating to the payment of claims resulting from loss or injury to animals by dogs, specifically provides that if the funds in the dog and kennel fund "are insufficient to pay such 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."

As a further indication that the Legislature intended that the dog and kennel fund should be self-supporting and place no general tax burden upon the counties, provision is made for increasing the fees for licensing dogs and kennels in the event such fund should be insufficient for the payment of claims allowed for live stock injured or destroyed by dogs. This provision is contained in Section 5652-7a, which is as follows:

"If in any year there should not be sufficient money in the dog and kennel fund, after paying the expenses of administration, to pay the claims allowed for live stock injured or destroyed by dogs, the county commissioners between December 1st and December 15th shall ascertain the number of claims entered and the amount of money allowed for live stock injured and destroyed, and, also the total expense incurred by the administration of the dog law, such commissioners shall also ascertain the amount received for dog and kennel licenses. The license fees for the ensuing year shall then be fixed at such an amount that when multiplied by the number of licenses issued during the previous year the product will equal the aggregate of the claims for injured and destroyed live stock allowed by said county commissioners, plus the balance of said allowed claims remaining unpaid, plus the expense of administration. The increase in said license fee shall always be in the ratio of one dollar for male or spayed female dogs, three dollars for unspayed female dogs and ten dollars for a dog kennel license."

Since the Legislature has made no special provision for appropriating funds derived from general taxation for the administration and enforcement of these sections of the Code relative to licensing dogs and the payment of damages caused by dogs, it becomes necessary to examine the provisions of the Budget Law to determine whether or not any general authority exists for transferring moneys from any other fund to the dog and kennel fund.

Section 5625-9 contains a tabulation of the funds which shall be established by each subdivision of the state. Paragraph (f) of that section provides that there shall be established "a special fund for each class of revenue derived from a source other than the general property tax, which the law requires to be used for a particular purpose." It is under the provisions of this paragraph of Section 5625-9 that the dog and kennel fund was established. Section 5625-13, General Code, relates to the transfer of moneys from one fund to another. The only authority for transferring money from the general fund is contained in paragraphs (e) and (f) of this section, which paragraphs are as follows:

"e. Moneys may be transferred from the general fund to the sinking fund or the bond retirement fund to meet a deficiency in either of the latter funds.

f. Moneys appropriated therefor may be transferred from the general fund of a subdivision to a fund authorized by Sections 5625-11 or 5625-12 of the General Code or to the proper fund of a district authority."

The dog and kennel fund is not a sinking fund or a bond retirement fund and neither is it a fund authorized by Sections 5625-11 or 5625-12 of the General Code.

It is a fund authorized by Section 5625-9, General Code, as herein pointed out. It follows, therefore, that the Budget Law contains no authority for the transfer of moneys from the general fund to the dog and kennel fund.

A careful consideration of the foregoing and other correlated sections of the General Code leads me to the conclusion that there is only one circumstance whereby the dog and kennel fund of the county may be replenished to meet the existing situation. In the event there should be no outstanding indebtedness or other obligation of the county payable out of the sinking fund or bond retirement fund of the county and there should appear an unexpended balance in either of such funds, such unexpended balance, with the approval of the Court of Common Pleas of the county, may be transferred to the dog and kennel fund under the provisions of paragraph c of Section 5625-13, General Code, which paragraph is as follows:

"The unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred in the case of the sinking fund to the bond retirement fund and in the case of the bond retirement fund to the sinking fund; provided that if such transfer is impossible by reason of the non-existence of the fund herein designated to receive the transfer, such unexpended balance, with the approval of the Court of Common Pleas of the county wherein such subdivision is located, may be transferred to any other fund of the subdivision."

In compliance with your request, I am enclosing copy of Opinion No. 1338, which opinion appears in Opinions of the Attorney General for 1929, Vol. III, p. 2008. This opinion, holding that the dog warden need not necessarily view live stock that has been killed or injured by a dog in order that the county commissioners may allow the claim for such loss or injury, is predicated upon the fact that the statute imposes upon the dog warden the duty to investigate the facts of a loss or injury and that in making such investigation it is not necessarily required that he view the animal that is killed or injured. This, of course, has nothing to do with the mandatory duty to employ a dog warden, as provided in Section 5652-7, *supra*.

Specifically answering your inquiry, it is my opinion that:

1. The compensation of a dog warden employed pursuant to the provisions of Section 5652-7, General Code, is payable out of the dog and kennel fund, and in the event there are insufficient moneys in such fund for the payment of such compensation, there is no authority to transfer moneys for such purpose to the dog and kennel fund from the general fund.

2. The only circumstances whereby moneys derived from general taxation may be used for the purposes of the dog and kennel fund are set forth in paragraph c of Section 5625-13, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.