

school pupils and fail to do so, and for that reason a parent is authorized to furnish such transportation and be paid the reasonable value thereof, the parent should not be paid if in fact he has been put to no expense in the transportation of the said child. If it appears that said child has been transported by some third party without any expense whatever to the parent, the parent cannot recover.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2464.

DOG—ALLOWANCE OF SHEEP CLAIMS BY COMMISSIONERS—FORTY-EIGHT HOUR NOTICE OF INJURY REQUIRED.

*SYLLABUS:*

1. *By the terms of Section 5840, General Code, in order to entitle any owner of sheep killed or injured by dogs to enter a claim for damages, such owner must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.*

2. *Unless the owner of such sheep has given notice to a county commissioner in person or by registered mail, as required by Section 5840, General Code, within forty-eight hours after the loss or injury has been discovered, the county commissioners are without authority to allow and pay such claim.*

COLUMBUS, OHIO, August 20, 1928.

HON. E. B. UNVERFERTH, *Prosecuting Attorney, Ottawa, Ohio.*

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

“We have a question here that is bothering us some and we would like to have your opinion in the matter. The facts are about these:

A short time after the new law went into effect governing the allowance of claims for sheep killed and injured, some claims were filed with the county commissioners for allowance, and the trouble with them is that the commissioners were not notified, as the law provides. The township trustees were notified and an appraisal was had according to law. In fact, everything was done according to law excepting the notification of the county commissioners.

Now, the question is, have the county commissioners any power to allow and pay these claims?”

The specific sections of the General Code which govern the presentation and allowance of claims for loss or injury to live stock inflicted by dogs are Sections 5840, et seq.

Section 5840 provides:

“Any owner of horses, sheep, cattle, swine, mules and goats which have been injured or killed by a dog not belonging to him or harbored on his premises, in order to be entitled to enter a claim for damages must notify a

county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered, and such commissioner shall immediately notify the dog warden or other enforcing officer of such loss or injury, whose duty it shall be to have the facts of such loss or injury investigated at once. The owner of such horses, sheep, cattle, swine, mules or goats, may present to the township trustees of the township in which such loss or injury occurred, within sixty days a detailed statement of such loss or injury done, supported by his affidavit that it is a true account of such loss or injury. A duplicate of such statement shall be presented to the county commissioners of the county in which such loss or injury occurred. If such statements are not filed within sixty days after the discovery of such loss and injury no compensation shall be made therefor. Such statement shall set forth the kind, grade, quality and value of the horses, sheep, cattle, swine, mules and goats so killed or injured, and the nature and amount of the loss or injury complained of, the place where such loss or injury occurred, and all other facts in the possession of the claimant which would enable the dog warden to fix the responsibility for such loss or injury. Statements of the nature and amount of the loss or injury complained of shall be supported by the testimony of at least two freeholders who viewed the results of the killing or injury and who can testify thereto."

You will observe that under the provisions of Section 5840, *supra*, the conditions precedent which must be complied with by the owner of any of the live stock enumerated therein in order to entitle him to enter a claim for damages for loss or injury caused by dogs are:

1. He must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.
2. He must present to the township trustees of the township in which such loss or injury occurred within sixty days a detailed statement of such loss or injury done, supported by his affidavit.
3. He must present a duplicate of such statement to the commissioners of the county in which such loss or injury occurred.

According to your communication, the first of the above conditions precedent has not been met. That is to say, while a detailed statement of the loss or injury done, supported by affidavit, was apparently presented to the township trustees and a duplicate of such statement presented to the county commissioners as required by Section 5840, General Code, the owner of the sheep killed and injured failed to notify a county commissioner in person or by registered mail within forty-eight hours after the loss or injury was discovered.

In your communication you state that some claims were filed with the county commissioners for allowance, but I am assuming that this refers to the duplicate statement required to be filed with the county commissioners at the same time the original of such statement was filed with the township trustees, and not to the notice required to be given to a county commissioner in person or by registered mail within forty-eight hours after the loss or injury was discovered. Had there been any attempt to comply with the requirement of notifying a county commissioner within the forty-eight hour period as required by Section 5840, General Code, which fell short of the requirement of the statute, the holding in Opinion No. 2306, rendered by this department to the Bureau of Inspection and Supervision of Public Offices, under date July 2, 1928, might perhaps be applicable. The third paragraph of the syllabus of that opinion reads as follows:

"The requirement of Section 5840, General Code, to the effect that the owner of live stock injured or killed by a dog not belonging to him or harbored on his premises, in order to be entitled to enter a claim for damages, must 'notify a county commissioner in person' should be liberally construed to effect the purpose of the Legislature and any notice which brings to the personal knowledge of any commissioner the loss or injury sustained is sufficient."

However, in view of the fact that there has been no attempt to comply with the requirement of giving notice to the county commissioners within forty-eight hours after the loss or injury was discovered, it is my opinion that your question is answered by Opinion No. 1930, rendered to the Bureau of Inspection and Supervision of Public Offices, under date of April 2, 1928, the syllabus of which opinion reads as follows:

"1. By the terms of Section 5840, General Code, in order to entitle any owner of horses, sheep, cattle, swine, mules and goats, which have been injured or killed by a dog not belonging to such owner, or harbored on his premises, to enter a claim for damages, such owner must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.

2. A board of county commissioners is without authority to allow a claim for damages, presented under the provisions of Section 5840, General Code, unless the claimant notifies a county commissioner in person or by registered mail within forty-eight hours after the loss or injury has been discovered."

In the course of the opinion it was said:

"By the plain and unambiguous language used in Section 5840, supra, the Legislature has expressed its intent that, in order for any owner of horses, sheep, cattle, swine, mules and goats injured or killed by a dog not belonging to him, or harbored on his premises, to be entitled to enter a claim for the damage incurred, the claimant *must* notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.

It is elementary that boards created by statute, such as boards of county commissioners, have only such powers as are expressly given by statute and those necessarily implied to carry into effect the powers expressly granted. This principle is especially applicable with reference to the financial affairs of a county and the powers and duties of county commissioners with respect thereto. Public moneys and public property, whether in the custody of public officers or otherwise, constitute a public trust fund, which can only be disbursed by clear authority of law.

The notification within the time expressly provided for, in Section 5840, supra, is a condition precedent, which must be complied with in order to entitle a claimant to enter his claim for damages. The reasons for such notice are obvious, the purpose being to enable the county commissioners to have an investigation of the damage sustained made by the proper officer without delay, and I deem it unnecessary to comment upon the same herein."

In view of the foregoing, and answering your question specifically, I am of the opinion that:

1. By the terms of Section 5840, General Code, in order to entitle any owner of sheep killed or injured by dogs to enter a claim for damages, such owner must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.

2. Unless the owner of such sheep has given notice to a county commissioner in person or by registered mail, as required by Section 5840, General Code, within forty-eight hours after the loss or injury has been discovered, the county commissioners are without authority to allow and pay such claim.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2465.

FUNDS—RELEASE OF FUNDS SET ASIDE FOR ROAD IMPROVEMENT  
AFTER PROJECT HAS BEEN ABANDONED—PROCEDURE—AUTHORITY OF COUNTY COMMISSIONERS AND TOWNSHIP TRUSTEES  
WHEN BODIES ARE CO-OPERATING IN ROAD IMPROVEMENT.

*SYLLABUS:*

1. *Where proceedings have been instituted for the improvement of a county road, the cost of which is to be borne proportionately by the county, township and property owners, and pursuant to such proceedings the township clerk has certified that moneys are available for the purposes of the contract in connection with such improvement, the encumbrance created by such certificate does not expire at the end of the fiscal year but continues against the funds in question until such time as the county commissioners and township trustees take definite action by resolution abandoning the project.*

2. *Upon the adoption by the county commissioners and the township trustees of resolutions abandoning the project, the certificate of the township clerk may be cancelled and the funds released for other purposes.*

COLUMBUS, OHIO, August 20, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge your recent communication as follows :

“We are enclosing herewith a letter from the prosecuting attorney of Monroe County, together with transcript of the proceedings for the improvement of a certain road in that county. You will note that the final step in the procedure is with reference to the surfacing of the road and that the trustees of the township have certified to the county their approval for the township’s share of the proposed surfacing in the sum of \$3,250.00 and the township clerk has certified that there are sufficient funds available to meet the township’s share so approved. It seems that the county commissioners have not proceeded with the surfacing of the road and the question which the prosecutor desires to have your opinion upon is whether in the event that the county commissioners do not proceed with the road the amount of the certification of the township trustees and the township clerk may be released so that it can be used in connection with another improvement in the township.

We respectfully request you to furnish this department your written opinion upon this question.”