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DOG AND KENNEL FUND—BOARD OF COUNTY COMMISSIONERS—CAN NOT LEGALLY PAY FROM SUCH FUND, OR FROM ANY OTHER FUND, UNDER ITS CONTROL, CLAIM OF OWNER OF LIVESTOCK BITTEN BY A FOX, AFFLICTED WITH RABIES.

SYLLABUS:

The board of county commissioners cannot legally pay from the dog and kennel fund, or from any other fund over which it has control, the claim of an owner of livestock which has been bitten by a fox afflicted with rabies.

Columbus, Ohio, April 4, 1946

Hon. G. O. McGonagle, Prosecuting Attorney
McConnelsville, Ohio

Dear Sir:

Your request for my opinion reads:

“In this county, Morgan, quite a large number of livestock have been found to have been suffering from rabies and the commissioners, having no other fund available, have been paying

this damage out of the dog and kennel fund, which is now about exhausted and claims are still coming in. The fact seems to be that this damage arises from the livestock having been bitten by foxes, as practically every head sent to the state laboratory returns with a finding of rabies, while in only one case of the head of dog being sent in has returned with a report of rabies. The dog owners protest that this injury is done by foxes not dogs and that compensation for such injury should not be paid from the dog fund.

Question: May this damage be paid from the dog and kennel fund? If not, from what fund may it be paid? In case the dog fund or any proper fund for the payment of such damage becomes exhausted then by what method may the commissioners pay such damage?"

The uses and purposes of the dog and kennel fund are found in Section 5652-13, General Code, which reads 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 G. C. Sections 5840 to 5849, both inclusive*, and in accordance with the provisions of G. C. Section 5653. 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 G. C. Section 5652 and supplemental sections."

(Emphasis added.)

Other sections of the General Code which are pertinent to your inquiry provide:

Section 5840:

"Any owner of horses, sheep, cattle, swine, mules, goats and domestic fowls or poultry having an aggregate value of ten dollars

or more 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, goats, or domestic fowls or poultry having a value of ten dollars or more, 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, goats and domestic fowls or poultry having a value of ten dollars or more 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.”
(Emphasis added.)

Section 5841 :

Before any claim shall be allowed by the trustees to the owner of such horses, sheep, cattle, swine, mules, goats or domestic fowls or poultry having a value of ten dollars or more, it shall be proved to the satisfaction of the trustees :

(1) That the loss or injury complained of was not caused in whole or in part by a *dog or dogs* kept or harbored on the owner's premises, or ;

(2) If the *dog or dogs* causing such loss or injury were kept or harbored on such owner's premises, that such *dog or dogs* were duly registered and that they were destroyed within forty-eight hours from the time of the discovery of the fact that the injury was so caused.

If the owner of the *dog or dogs* causing such loss or injury is known, it shall be the duty of the trustees to bring an action

to recover such damage from the owner of said dog or dogs, if in their judgment said damage could be collected, unless it is shown to said trustees that said dog or dogs were duly registered and that they were destroyed within forty-eight hours after discovery of the fact that the loss was so caused."

(Emphasis added.)

Section 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."

(Emphasis added.)

All public money constitutes a public trust fund which can be disbursed only by clear authority of law. See 32 O. Jur. 734; State ex rel. Smith v. Maharry, 97 O. S. 272. The only authority contained in the foregoing sections of the General Code for the payment of money from the dog and kennel fund for claims of owners of livestock is limited to claims of owners of horses, sheep, cattle, etc., "which have been injured or killed by a dog." Therefore I must conclude that damage resulting from livestock being bitten by rabid foxes cannot legally be paid from the dog and kennel fund unless it can be successfully argued that the term "dog," used in the foregoing sections of the General Code, includes "fox."

One of the fundamental rules of statutory interpretation in determining the meaning of the General Assembly in using a particular word or phrase is, that words of common usage should be given their usual, ordinary and natural meaning unless there is some indication to the contrary in the statute itself. Eastman v. State, 131 O. S. 1; Crawford, Statutory Construction, p. 316. A dog is ordinarily thought of as a canine which has been kept in a domestic state by man since prehistoric times, whereas a fox is a wild animal which is trapped or killed for its fur.

That the General Assembly recognizes a distinction between a dog and a fox, and in enacting laws uses those terms in their usual, ordinary and natural meaning, is evidenced by other sections of law in which the terms appear. In all of the statutes the dog is treated as a domestic animal which is commonly the property and companion of man. Section 5652, et seq., General Code, provides for the registration and licensing of dogs by their owners; Section 5652-14a for the confinement on the premises by the owner of a female dog in heat; Sections 5838 and 5839 for the conditions under which a dog may be killed; Section 5853 for the transportation of a blind person led by a trained dog; Section 1391 for hunting with a dog; Section 13429-5 prohibits anyone pitting one dog against another in a dog fight; etc.

On the other hand, prior to the enactment of House Bill No. 41 by the 96th General Assembly, effective July 10, 1945, the fox has been treated as a wild fur-bearing animal which could be legally killed or trapped. Individuals were licensed by the state to engage in the business of dealing in its fur. By the enactment of the aforementioned House Bill No. 41, the 96th General Assembly amended the fish and game laws so that now a fox is described as a "public menace," and the board of county commissioners of any county is authorized to fix and pay a bounty of from one to five dollars for each fox killed.

It is therefore my opinion that the term "dog," as used in Section 5840, et seq., and related sections of the General Code, does not include "fox."

A search of the other statutes concerning the power of the board of county commissioners to expend funds does not disclose any authority to pay for damages to livestock caused by the bite of a rabid fox.

The only section of the General Code related to this problem is Section 5851, which provides:

"A *person* bitten or injured by a dog, cat or other animal afflicted with rabies, if such injury has caused him to employ medical or surgical treatment or required the expenditure of money, within four months after such injury and at a regular meeting of the county commissioners of the county where such injury was received, may present an itemized account of the expenses incurred and amount paid by him for medical and surgical attendance, verified by his own affidavit and that of his

attending physician; or the administrator or executor of a deceased person may present such claim and make such affidavit. If the person so bitten or injured is a minor such affidavit may be made by his parent or guardian." (Emphasis added.)

This section relates only to a *person* bitten or injured by a dog, cat or other animal afflicted with rabies. As I have stated, there is no similar statute in Ohio law providing for reimbursement of the owner of livestock so bitten or injured by an animal other than a dog.

It is impossible and it would be improper for me to determine from your letter the cause of the infection of the cattle for which claims have already been allowed. This is a determination which, as a matter of law, must have been made by the township trustees and by the board of county commissioners in allowing claims for the loss of or injury to the animals named in Section 5840, General Code. Said section, together with Section 5841, General Code, provides that the owner of an animal for which claim is made must file with the township trustees an affidavit containing a true account of the loss or injury which he has suffered, and that the township trustees must determine that the injury was caused by a dog and that such dog was either not kept or harbored on the owner's premises or, if the dog was kept or harbored on the owner's premises, that it was duly registered and that it had been destroyed within forty-eight hours from the time of the discovery of the fact that the injury was so caused. Under Section 5846, General Code, the board of county commissioners has the duty of examining each such claim at its next regular meeting after such claims have been properly submitted. And, based on such examination and any additional testimony which the board of county commissioners desires to hear, it should pay the amount which it determines to be just out of the dog and kennel fund.

In specific answer to your question, it is therefore my opinion that the board of county commissioners cannot legally pay from the dog and kennel fund, or from any other fund over which it has control, the claim of an owner of livestock which has been bitten by a fox afflicted with rabies.

Respectfully,

HUGH S. JENKINS,
Attorney General