

of Section 192, General Code, before the last tax listing day in any year in order to exempt Ohio shareholders from listing their stock for taxation. If shares of stock of foreign corporations are held by domestic corporations, said domestic corporations are required to list and value said stock as of the first day of January. If the status for taxation of the shares of stock of foreign corporations held by domestic corporations is fixed as of January 1, 1928, and the listing and valuation of said shares are required to be made as of January 1, 1928, it is evident that the election of said foreign corporation to pay the franchise tax filed after January 1, 1928, will not exempt from listing and taxation the shares of stock of said foreign corporation held by domestic corporations.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1099.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN JEFFERSON AND WOOD COUNTIES, OHIO.

COLUMBUS, OHIO, October 3, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

1100.

COUNTY COMMISSIONERS—ALLOWANCE TO PERSONS BITTEN BY DOGS—RABIES—ITEMIZED STATEMENT OF EXPENSES MUST BE FILED.

SYLLABUS:

1. *County commissioners may in their discretion, make allowances to persons who have been bitten by dogs, cats or other animals afflicted with rabies, for necessary medical and surgical expenses growing out of said injuries, which injuries have been sustained prior to the effective date of House Bill No. 164, passed by the 87th General Assembly, (112 v. 354), wherein Sections 5851 and 5852, General Code, are amended.*

2. *To vest jurisdiction in the county commissioners to make allowances to persons who have been injured by animals afflicted with rabies as provided by Sections 5851 and 5852, General Code, there must first be filed with said commissioners within four months after the injury, a verified itemized statement of the expenses incurred by the person receiving such injury, or his parent or guardian, if a minor, or the administrator or executor of a deceased person.*

3. *Where a person has been bitten or injured by a dog, cat or other animal afflicted with rabies, county commissioners are without authority to act upon a claim covering the expenses incurred and the amount paid by such person for medical and surgical attendance filed by any one other than the person bitten or injured, except that where such person has since died the claim and necessary affidavit may be made by his administrator or executor, or if the person so bitten or injured be a minor, such affidavit may be made by his parent or guardian.*

COLUMBUS, OHIO, October 3, 1927.

HON. JAMES COLLIER, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication requesting my opinion as follows:

“A local physician has presented a claim to the county commissioners of this county in the sum of more than \$3,000.00 for serum and services in administering the serum in the treatment of persons bitten by dogs afflicted with rabies. About one-half this claim is for the serum, and the balance for services in administering the serum, and treating the patients.

These persons so injured were treated between the dates of January 1, 1926, and January 1, 1927.

The county commissioners have been advised by representatives of the Bureau of Inspection to disallow the claim, and there is a considerable conflict of opinion among the different parties concerned.

Will you please advise me whether or not the claim is just and should be allowed by the county commissioners, or whether the claim is invalid and should be disallowed?”

Your inquiry states that the claim presented by your local physician is for the administering of serum treatment to *persons*, bitten by dogs *afflicted with rabies*. The provisions of law, whereby county commissioners are authorized to expend public funds in payment for medical services, incurred in the treatment of persons who have been bitten by dogs, cats or other animals afflicted with rabies, are those contained in Sections 5851 to 5852, General Code. Both of these sections of the Code were amended by the 87th General Assembly in House Bill No. 164, (112 O. L. 354). Prior to this amendment, and as in force from January 1, 1926, to January 1, 1927, the period during which the treatment in the instant case was administered, upon which the physician's claim is based, Sections 5851 and 5852, General Code, read as follows:

Section 5851. “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 or 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.”

Section 5852. “The county commissioners not later than the third regular meeting, after it is so presented, shall examine such account, and, if found

in whole or part correct and just may order the payment thereof in whole or in part out of the general fund of the county ; but a person shall not receive for one injury a sum exceeding five hundred dollars."

It is apparent from the provisions of the foregoing statutes that, before county commissioners could allow and pay a claim for medical or surgical treatment incurred by reason of a person having been bitten by a dog afflicted with rabies, a verified, itemized statement must be presented within four months of such injury, by the person suffering the injury, or by his parent or guardian, if a minor, or his administrator or executor if he has since died. No provision was made for the presentation of claims by physicians or surgeons and in the absence of specific authority therefor, no such claim could be allowed or paid.

It will be noted that the terms of Section 5852, General Code, as in force prior to their recent amendment were not mandatory. The legislative history of Section 5852 discloses that as originally enacted in Vol. 99 O. L. 82 it provided that the county commissioners after examining the account presented, and finding the same to be correct and just, might "*in their discretion* order the payment thereof or such parts as they may have found in their judgment correct and just." The codifying commission upon the codification of the statutes in 1910 revised the law by omitting the words "*in their discretion*," but did not change the permissive language of the statute by making the allowance and payment of such claims mandatory.

The question of the discretionary power of the commissioners with respect to the allowance of claims of this kind has been before this department on several occasions. In the Annual Report of the Attorney General for 1913, at page 1163, it is held :

"Under Section 5852, General Code, the allowance of damages to a person bitten by an animal afflicted with rabies, rests with the discretion of the county commissioners, and the commissioners may make such reasonable requirements for the purpose of investigation of the facts as they deem necessary."

Again, in Opinions of the Attorney General for 1915, page 2091 it is held :

"The allowance of an account presented to a board of county commissioners under the provisions of Section 5852, General Code is discretionary with said board."

In Opinions of the Attorney General for 1916, page 381, it is held :

"The statute is permissive in form and not mandatory."

Again, in Opinions of the Attorney General for 1918, page 156 after discussing this same question there appears this language :

"A board of county commissioners is permitted to order the payment, in whole or in part, of a bill which they find correct and just, for an expenditure of money on account of medical or surgical treatment required for a person who was bitten or injured by an animal afflicted with rabies, but the statute being permissive in form the board can not be compelled to pay such bill."

Specifically answering your question, I am of the opinion that inasmuch as it appears that the claim over which your controversy has arisen has not been presented to the commissioners in the manner provided by law, that is, by the *person or persons bitten or injured*, who must present an itemized account, verified by him or his attending

physician, the commissioners have no jurisdiction to allow and pay the claim even though they might desire to do so and the claim should therefore be disallowed.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1101.

AIRPORT—COUNTY COMMISSIONERS MAY NOT ISSUE BONDS FOR
PURCHASE OF LAND TO BE USED AS AIRPORT.

SYLLABUS:

A board of county commissioners, not being authorized by statute so to do, may not lawfully purchase land to be used as an airport and may not issue bonds for such purpose.

COLUMBUS, OHIO, October 3, 1927.

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

GENTLEMEN:—Receipt is acknowledged of your communication of recent date in which you request my opinion upon the following question:

“May a board of county commissioners purchase land for the use of an airport and may bonds be issued for such purpose?”

It is well settled that a board of county commissioners, being purely a creature of statute, has only such powers as are expressly conferred upon it by statute, and such implied powers as are necessary to carry into effect the powers expressly granted. See *Grinwell vs. County Commissioners*, 6 O. C. C. (N. S.) 182. We must, therefore, look to the statutes to determine whether power has been conferred upon county commissioners to purchase land to be used for an airport, and whether bonds may be issued to pay for such land.

An examination of the statutes pertaining to the purchase of land by county commissioners, as such statutes read prior to legislation upon this subject by the last legislature, discloses that the county commissioners were limited in their power to purchase land to the specific purposes there enumerated. In Section 2446, General Code, provision is made for the appropriation of land, or an easement in land, for a court house, jail, public offices, bridges and approaches thereto, or public market places or houses. Under the provisions of Section 2434-3, General Code, the commissioners may purchase land for library purposes. Also under other sections of the Code, which need not be mentioned here, the county commissioners may acquire land for road purposes, ditches, hospitals, county infirmaries, and otherwise.

Suffice it to say a board of county commissioners is not empowered to acquire land for any purpose other than those specifically and expressly stated. And in none of the statutes pertaining to the purchase of real estate by a board of county commissioners do we find any authority to purchase land to be used as an airport or for any other purpose connected with aviation.

The 87th General Assembly enacted House Bill No. 1 (112 v. 364) entitled “The Uniform Bond Act.” Section 2293-2 of said act provides: