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LIVESTOCK; CLAIM TO COUNTY FOR INJURY OR DEATH BY DOG—DOG NOT HARBORED BY OWNER OF STOCK—REGISTRATION OR KILLING OF DOG NOT REGARDED—§§955.29, 955.30 R.C.

SYLLABUS:

Under the provisions of Sections 955.29 and 955.30, Revised Code, the claim of an owner of livestock which has been killed or injured by a dog not kept or harbored on the premises of such owner, should be allowed if the evidence of the injury warrants it, without regard to the question whether the dog was registered, or whether it had been killed, as provided by Section 955.30, Revised Code.

Columbus, Ohio, October 20, 1958

Hon. Wilford R. Miller, Prosecuting Attorney  
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Several persons have filed animal claims within this county recently under Section 955.29 of the Revised Code of Ohio, and in these particular cases a dog which killed the animals was not kept or harbored on the premises of the owner of the animals that were killed and, in both instances, the owner of the dog refused to permit destruction of the dog within forty-eight hours after the loss was discovered.

“Section 955.30 of the Revised Code sets forth the instances in which a claim may be allowed by the Board of Township Trustees.

“The question arises as to whether a dog must be destroyed within forty-eight hours after discovery of the loss in order that the Trustees may allow a claim. As I interpret this section, a claim may be allowed even though the owner of the dog does not permit the dog to be destroyed, and that permission to destroy the dog merely guarantees the owner that he cannot be held responsible for the damages caused.

“I would like very much to have your opinion as to the interpretation of this section and specifically an answer to the question as to whether or not a claim may be allowed by the Township Trustees even though the dog that caused the loss was not destroyed.”

The right of the owner of domestic animals to recover from the county damages for stock killed or injured by dogs is set forth in Section 955.29, Revised Code, Section 5840, General Code. This Section provides that such owner must notify a member of the board of commissioners or dog warden, of the loss or injury within forty-eight hours after it has been discovered.

Section 955.30, Revised Code, reads as follows:

*“Before any claim is allowed by the board of township trustees pursuant to section 955.29 of the Revised Code, it shall be proved to the satisfaction of the board:*

“(A) That the loss or injury complained of was not caused in whole or in part by a dog kept or harbored on the owner’s premises;

“(B) If the dog causing such loss or injury was kept or harbored on such owner’s premises, that such dog was registered and that it was 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 causing such loss or injury is known, the board shall bring an action to recover such damage from the owner of said dog if in its judgment said damage could be collected, unless it is shown to said board that said dog was registered and that it was destroyed within forty-eight hours after discovery of the fact that the loss was so caused.”* (Emphasis added)

Your letter states that the dog which killed the animals in question was not kept or harbored on the premises of the owner of the animals. Accordingly, the provisions of Division (B) of the Section above quoted, may be wholly disregarded.

Disregarding for the moment the provisions of the last paragraph of said Section 955.30, *supra*, I call attention to the process whereby the township trustees are to arrive at satisfactory proof as to the merits of the claim.

Section 955.33, Revised Code, provides:

*“The board of township trustees shall hear such claims as are made under section 955.29 of the Revised Code in the order of their filing and may allow them in full or such parts thereof as the testimony shows to be just. The board shall indorse the amount allowed on each claim and shall transmit its findings with the testimony taken and the fees due witnesses in each case over the official signatures of the board members to the board of county*

commissioners in care of the county auditor, who shall enter each claim reported upon a book to be kept for that purpose in the order of its receipt.”

Section 955.34, Revised Code, requires witnesses at such hearing to be sworn and provides for their fees and mileage.

Section 955.35, Revised Code, requires the county commissioners to examine the claims thus approved by the township trustees, and authorizes the county commissioners to hear additional testimony and to make a determination as to the amount they may find to be just. Thereafter, such claims shall be paid out of the dog and kennel fund within five (5) days after the approval by the board.

Returning then to the final paragraph of Section 955.30, *supra*, we find a duty placed upon the township trustees to bring an action against the owner of the dog, if his identity is known, to recover the damage suffered by the owner. While not specifically provided, I think it safe to assume that this action would be brought only after the township trustees have made the investigation and had the hearing, and the county commissioners have arrived at a determination of the proper amount to be paid to the owner. It is provided in this final paragraph that the action should be brought only if, in the judgment of the township trustees, the damage could be collected, and no action is to be brought if it is shown that the dog in question was registered as required by law, and that it was destroyed within forty-eight hours after discovery that the loss was so caused.

It appears to me perfectly plain that the right of the owner of the stock who has suffered the injury is not dependent in any degree upon the question whether the owner is solvent or whether the dog which caused the injury was registered, or whether it has been destroyed. The purpose of the statutes plainly is to reimburse the owner for his loss. The conditions as to the solvency of the owner of the dog or the registration and destruction of the dog, are wholly unrelated to the relief which the law intends to afford the owner of the animals, and can affect nothing except the recovery by the trustees.

In Opinion No. 183, Opinions of Attorney General for 1936, p. 218, the question was whether the claim of an owner of stock could be rejected if it was found that the owner of the dog was not financially responsible. It was held :

"2. The county commissioners can not reject a claim made under Section 5840, General Code, (955.29, R.C.) on the ground that the owner of dogs is financially responsible."

Referring to an earlier opinion, it was said:

"I refer you to the 1931 Opinions of the Attorney General at page 1308. In that opinion the Attorney General ruled:

'Upon compliance with the terms of Section 5840, General Code, the county commissioners are required to pay the claim for loss caused by a dog to horses, sheep, cattle, swine, mules or goats.'

"\* \* \*

"Consequently, as was pointed out in the 1931 Attorney General's opinion cited above, if the aggrieved party complies with Section 5840, supra, the county commissioners are required to pay such amount to the claimant as they may find to be just. It must also be borne in mind that this action of the township trustees in attempting to collect damages *is for the purpose of the reimbursement of the county commissioners rather than an action for the benefit of the aggrieved party.*" (Emphasis added)

Accordingly, in specific answer to your question, it is my opinion, and you are so advised, that under the provisions of Sections 955.29 and 955.30, Revised Code, the claim of an owner of livestock which has been killed or injured by a dog not kept or harbored on the premises of such owner, should be allowed if the evidence of the injury warrants it, without regard to the question whether the dog was registered, or whether it had been killed, as provided by Section 955.30, Revised Code.

Respectfully,  
WILLIAM SAXBE  
Attorney General