

809.

APPROVAL, NOTES OF BAINBRIDGE VILLAGE SCHOOL DISTRICT,  
ROSS COUNTY, OHIO—\$4,904.00.

COLUMBUS, OHIO, May 10, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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810.

APPROVAL, NOTES OF FRAZEYSBURG VILLAGE SCHOOL DISTRICT,  
MUSKINGUM COUNTY, OHIO—\$251.00.

COLUMBUS, OHIO, May 10, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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811.

APPROVAL, BONDS OF SPRINGFIELD TOWNSHIP RURAL SCHOOL  
DISTRICT, SUMMIT COUNTY, OHIO—\$8,000.00.

COLUMBUS, OHIO, May 10, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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812.

APPROVAL, SUPPLEMENTAL RESOLUTION FOR ROAD IMPROVE-  
MENT IN WARREN COUNTY, OHIO.

COLUMBUS, OHIO, May 10, 1933.

HON. O. W. MERREL, *Director of Highways, Columbus, Ohio.*

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813.

WITNESS FEES—HEARING BEFORE TOWNSHIP TRUSTEES FOR IN-  
JURIES INFLICTED TO LIVESTOCK BY DOGS—WITNESSES EN-  
TITLED TO FEES AS WITNESS AND MILEAGE—LIMITED TO FOUR  
WITNESSES.

**SYLLABUS:**

*Under sections 5844 and 5845 of the General Code, persons who testify at a hearing before the township trustees on a claim for damages resulting from injuries inflicted by dogs to certain livestock, as provided under sections 5840, et seq.,*

*General Code, are entitled to an allowance of fifty cents witness fee and mileage at the rate of five cents per mile to and from their residence to the place of hearing by the township trustees. Mileage or witness fees can not legally be allowed to more than four witnesses. Mileage fees can not legally be allowed for going to or returning from viewing the injured livestock.*

COLUMBUS, OHIO, May 11, 1933.

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

GENTLEMEN:—I am in receipt of your recent request for my opinion, which reads as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following:

Sections 5840 to 5845 of the General Code, relate to claims for damages to sheep and other animals, by dogs. Section 5840 provides that the owner of such animals shall present a claim to the township trustees and a duplicate thereof to the county commissioners, and provides what such claims shall contain. It further provides that statement of the nature and amount of loss or injury shall be supported by the testimony of at least two freeholders who viewed the result of the killing or injury, and who can testify thereto.

Section 5844 provides that the township trustees shall hear such claims in the order of their filing and may allow them in full or such parts thereof as the testimony shows to be just, and that they shall endorse the amount allowed on each claim and transmit their findings with the testimony so taken and the fees due witnesses in each case to the county commissioners.

Section 5845 provides that witnesses, not exceeding four, as provided in the next preceding section shall be allowed fifty cents each and mileage at the rate of five cents per mile going and returning.

QUESTION: Are the witnesses provided for in these sections entitled to fifty cents and mileage from their homes to the place of view, and also fifty cents each and five cents per mile to and from the place of hearing held by the board of trustees?”

Sections 5840 to 5851 of the General Code provide for the payment of claims for damages by dogs to certain livestock, and prescribe the procedure to be followed. Your inquiry involves the construction of sections 5844 and 5845, General Code. Section 5844 was amended by the 82nd General Assembly, by the passage of Amended House Bill No. 4, 107 O. L. 534, page 538. This section now reads as follows:

“The township trustees shall hear such claims in the order of their filing and may allow them in full or such parts thereof as the testimony shows to be just. They shall endorse the amount allowed on each claim and transmit their findings with the testimony so taken and the fees due witnesses in each case over their official signatures, to the county commissioners in care of the county auditor, who shall enter each claim so reported upon a book to be kept for that purpose in the order of their receipt.”

Section 5845 was amended by the 83rd General Assembly by the enactment of House Bill No. 493, 108 O. L. Pt. 1, 534 at 538. This act amended section 5845, General Code, as the section was amended by House Bill No. 4 of the 82nd General Assembly. Section 5845 now reads:

“Witnesses not exceeding four in number, as provided in the next preceding section, shall be allowed fifty cents each and mileage at the rate of five cents per mile, going and returning, in each case. The trustees shall administer an oath or affirmation to each claimant or witness.

If the horses, sheep, cattle, swine, mules and goats killed or injured, are in the care of an employe or tenant of the owner thereof, the affidavit provided in section 5840, may be made by such employe or tenant, whose testimony may be received in regard to all matters relating thereto to which said owner would be competent to testify.”

The legislatures of both the 82nd General Assembly, which adopted House Bill No. 4, of which section 5844 was a part, and the 83rd General Assembly which adopted House Bill No. 493, of which section 5845 was a part, adopted the section numbers as part of the acts. In section 5845 reference is made to the witnesses as provided in the next preceding section. This preceding section is the preceding section of the Code and not the preceding section of the fact. Section 5845 therefore prescribes the witness fees and mileage fees for witnesses as provided under section 5844.

Section 5844 provides for a hearing before the township trustees for claims for damages resulting from injuries to certain livestock by dogs. Freeholders or other persons who view the injured livestock are not witnesses while going to or returning from viewing the damages done to the livestock. The term “witness” is defined in Bouvier’s Law Dictionary as:

“One who testifies to what he knows; one who testifies under oath to something he knows at first hand.”

Section 5845 provides for an allowance for witness fees at a hearing on the claim before the township trustees. It is my opinion that a person who goes to view the result of the killing or injury is not entitled to mileage from his residence to view the damage done by the dogs. Witnesses who testify at the hearing before the township trustees on a claim for damages resulting from injuries inflicted by dogs to certain livestock are entitled to a fifty cent witness fee and five cents per mile to and from the hearing from the place of their residence.

In specific answer to your inquiry, it is my opinion that under sections 5844 and 5845 of the General Code, persons who testify at a hearing before the township trustees on a claim for damages resulting from injuries inflicted by dogs to certain livestock, as provided under sections 5840, et seq., General Code, are entitled to an allowance of fifty cents witness fee and mileage at the rate of five cents per mile to and from their residence to the place of hearing by the township trustees. Mileage or witness fees can not legally be allowed to more than four witnesses. Mileage fees can not legally be allowed for going to or returning from viewing the injured livestock.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*