

3963.

CLAIMS—LIVE STOCK KILLED BY DOG—PAID BY COUNTY
WHERE SUCH LOSS OCCURRED.

SYLLABUS:

Under Section 5840, General Code, claims for loss, or injuries to sheep caused by dogs, should be allowed by the county in which such loss or injuries to the sheep occurred.

COLUMBUS, OHIO, January 18, 1932.

HON. GEORGE S. MIDDLETON, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

“Where sheep are owned and returned for taxes in one County, are pastured in an adjoining County and are killed by dogs in said adjoining County, which County has the liability of paying the sheep claim?”

The procedure to be followed by the owner of sheep for the recovery of damages from a county for injuries or death caused by dogs is set forth in Sections 5840 et seq. of the General Code.

Section 5840, General Code, reads as follows:

“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 time, 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 will enable the dog warden to fix the responsibility of 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 free-holders who viewed the results of the killing or injury and who can testify thereto.”

(Italics the writer's.)

An examination of the section discloses that the various reports required therein must be made to the township or county officials of the county in which

such loss or injury occurred. A consideration of the wording contained in the section negatives the possible construction that the words "loss or injury" refer to financial loss to the owner of such animals, thus placing the duty of paying for such injuries upon the county where the animals are returned for taxation.

That the county where the injury to the animals occurred should bear the loss is apparent from a consideration of the fact that claims for such injuries are to be paid from the county dog and kennel fund, established under the provisions of Section 4846, General Code, which fund is created from the proceeds of dog and kennel licenses issued in the county and not from funds provided from the proceeds of general taxation. To penalize the county of the owner's residence by requiring it to pay for damages caused by an act outside of its jurisdiction which it is powerless to control and the prevention of which act is under the jurisdiction and control of an adjoining county, is contrary to reason.

A consideration of the foregoing impels the conclusion that upon complying with the statutory requirements, the owner of the sheep in question is entitled to recover damage done to such sheep by dogs from the county in which the injury to such sheep occurred.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3964.

COMPLIMENTARY COMMISSION—MAY BE ISSUED TO RESIDENT OF THIS STATE WHO WAS NOT RESIDENT OF STATE WHEN HE ENTERED MILITARY SERVICE.

SYLLABUS:

A complimentary commission may be issued to any resident of Ohio who, as a soldier, sailor, marine or aviator, has been awarded the Medal of Honor or the Distinguished Service Cross or the Silver Citation Star by the United States of America for the most distinguished gallantry, although at the time of his entrance into said service he was a resident of another state.

COLUMBUS, OHIO, January 19, 1932.

HON. FRANK D. HENDERSON, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads:

"An opinion is requested whether or not Sections 14867-9 to 13 may be construed to provide for the issue of a complimentary commission to each soldier, sailor, marine or aviator, who has been awarded the Medal of Honor or the Distinguished Service Cross, or the Silver Citation Star by the United States of America, for the most distinguished gallantry, who at the time of his entrance into said service, was a resident of another state."

Section 14867-9, General Code, to which you refer, reads:

"That the governor or his representative is hereby authorized and directed to request citizens of the state of Ohio, to voluntarily, and with-