

1533.

SHEEP—RABIES—DAMAGES—WITHIN DISCRETION OF TOWNSHIP TRUSTEES AND COUNTY COMMISSIONERS.

Whether or not the owner of sheep which were killed by reason of the belief that they were afflicted with rabies after having been bitten by a dog, is entitled to damages rests in the discretion of the township trustees and the county commissioners, under the provisions of sections 5840-5846 of the General Code.

COLUMBUS, OHIO, August 30, 1920.

HON. BARCLAY W. MOORE, *Prosecuting Attorney, Cadiz, Ohio.*

DEAR SIR:—Your recent inquiry is as follows:

“Section 5840 of the General Code, 107 O. L., page 537, provides 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 in his premises, may present to the township trustees of the township in which such loss or injury occurred, at a regular meeting of said trustees, within six months after such occurrence, a detailed statement of such loss or injury done, supported by his affidavit that it is a true account of such loss or injury. Such statement shall set forth the kind, 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, and 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.’

Growing out of a claim presented to the commissioners for and on account of sheep killed, the commissioners have propounded a question to me which seems to be so important that I am taking the liberty of writing you for your opinion in the matter.

The situation is briefly as follows: A dog attacked a flock of sheep and so mutilated and injured eight of them about the head and throat that they were killed on account of their condition; the dog was killed and buried; about two or three weeks later, seven other sheep of the same flock which had been injured or bitten by this dog began to act in a peculiar manner, so that the owner determined that they were suffering from rabies and called in witnesses to observe the conduct of the sheep, and following this he killed them.

Question: Whether he is entitled to pay for these sheep which he shot with the idea that they were diseased as above stated.

Personally, I was of the impression that where the trustees were satisfied that the sheep were injured to the extent that it became necessary to kill them, then that the claim was valid and he was entitled to be paid out of the fund provided in such cases.

I would appreciate it if you would advise me as to the proper interpretation of the section, especially since there is also pending a claim for a hog bitten by a mad dog and this will cover both cases.”

It is clear that under the above section a party having sheep killed or injured is entitled to have his claim for injuries sustained allowed unless the facts preclude him from making the proof required under section 5841 G. C., which provides:

"Sec. 5841. Before any claim shall be allowed by the trustees to the owner of such horses, sheep, cattle, swine, mules or goats, 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."

The township trustees, under the provisions of section 5844, are required to hear such claims, and "may allow them, or such parts thereof, as the testimony shows to be right and just."

Section 5846 G. C., provides:

"Sec. 5846. The county commissioners, at the next regular meeting, shall examine such claims and may hear additional testimony or receive additional affidavits in regard to the claims and may allow the amount determined by the township trustees or part thereof, or any amount in addition thereto that they find to be correct and just, to be paid out of the fund created by the per capita tax on dogs. Such claims, as are allowed in whole or in part, shall be paid only at the June session of such commissioners; and, if such fund is insufficient to pay the claims in full, they shall be paid pro rata. If there is not sufficient money in such fund in any year to pay the claims in full, the part thereof allowed but unpaid by reason of lack of funds, shall be paid in any year thereafter whenever there is a surplus in the fund remaining after the claims for such year have been paid in full."

In an opinion of this department found in the Annual Report of the Attorney General for 1912, Vol. II, page 1311, it was held:

"The allowance of damages for injuries to sheep by a dog, under sections 5840-5846, General Code, rests in the discretion of the township trustees and county commissioners, under the procedure therein provided, and this discretion extends to damage caused by worry or fright to said sheep, though there exists no visible physical disorder."

While this opinion discusses the law as it existed prior to the amendment in its present form, the change in the law is not material in connection with your question.

From the foregoing the conclusion must be that the township trustees and county commissioners are the sole judges as to whether an injury has been sustained, and if so as to the amount of the claim that should be allowed.

Whether or not the circumstances were such as to require the killing of the sheep to which you refer must be determined by the trustees and the commissioners from the evidence before them. Of course, the best method would have been to have had an analysis of the dog's head to determine whether the dog was afflicted with rabies, yet I know of no law that would compel this procedure.

As above indicated, if, in the discretion of the trustees and the commissioners, the evidence establishes the fact that the sheep which were bitten by the dog were so injured as to render them valueless or to demand their being killed because afflicted with rabies, they would be warranted in allowing compensation for the damages sustained by the owner.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1534.

SCHOOLS—DISTRICTS MAINTAINING SECOND AND THIRD GRADE HIGH SCHOOLS—ELECTORS REFUSED TO AUTHORIZE ADDITIONAL LEVY ALTHOUGH MAXIMUM LEVY PERMITTED BY LAW NOT REACHED—BOARD OF EDUCATION NOT RELIEVED OF PAYING TUITION OF GRADUATES ELIGIBLE TO HIGH SCHOOL, RESIDENTS OF DISTRICT.

School districts maintaining second and third grade high schools, have not reached the maximum levy permitted by law, as provided in section 7748 G. C., where the electors in such school district, at a special election held on August 10, 1920, refused to authorize the additional levy allowed under the provisions of section 5649-5 and section 5649-5a, submitted at such election under authority of section 3 of House Bill 615 (108 O. L. 1303), and the board of education is not relieved of paying the tuition of graduates eligible to high school who are residents in such school district.

• COLUMBUS, OHIO, August 30, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of August 16, 1920, in which you request the opinion of this department upon the following statement of facts:

“Section 7747 G. C. provides that the county superintendent shall issue to pupils who have completed the elementary school work and who have been so certified by the district superintendent, a certificate of promotion which shall entitle the holder to admission to any high school. Section 7748 G. C. provides that a board of education, ‘maintaining a third grade high school, as defined by law shall be required to pay the tuition of graduates from such school residing in the district at any first grade high school for two years, or a second grade high school for one year * * *. A board maintaining a second or third grade high school is not required to pay such tuition when the maximum levy permitted by law for such district has been reached and all the funds so raised are necessary for the support of the schools of such district * * *.’ In some districts maintaining such high schools, the electors at a special election held on August 10, 1920, refused to authorize an additional levy under the provisions of sections 5649-5 and 5649-5a G. C., and consequently are not entitled to participate in the reserve fund of \$500,000.

“Has the ‘maximum levy permitted by law’ as provided in section 7748 been reached in such cases and is the board thus relieved of paying the tuition of graduates above mentioned?”