

"The deputies of elective or principal executive officers authorized by law to act for and in the place of their principals and holding a fiduciary relation to such principals."

It is believed to be apparent that in the performance of the duty of the deputy surveyor who has been designated as county maintenance engineer, such deputy is acting for and in the place of the county surveyor, and comes clearly within the exception of the provisions of Section 486-8, *supra*, hereinbefore quoted.

Based upon the foregoing, and in specific answer to your inquiry, you are advised that a deputy county surveyor designated by the surveyor as county maintenance engineer under the provisions of Section 2788-1, of the General Code, is in the unclassified civil service of the State, and no examination in such instance is required.

Respectfully,
GILBERT BETTMAN,
Attorney General.

63.

DOG AND KENNEL FUND—DEFICIT ARISING FROM LIVE STOCK CLAIMS FILED SINCE AUGUST 10, 1927—PAYMENT WITH REVENUE FROM INCREASED LICENSE FEES AFTER DEDUCTION OF ADMINISTRATION EXPENSES.

SYLLABUS:

Where there was a deficit in the dog and kennel fund on account of live stock claims filed subsequent to August 10, 1927, and the county commissioners increased the license fees for the year 1928 by reason of said deficit, the amount realized from the registration fees in the year 1928, after the payment of expenses of administration of the law, should be used for the payment in full of the claims filed and allowed after the effective date of said law, in the order in which they were allowed.

COLUMBUS, OHIO, February 5, 1929.

HON. DEANE M. RICHMOND, *Prosecuting Attorney, London, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

"I respectfully request your opinion on the following facts:

The commissioners of Madison County, Ohio, last January set a certain price for dog licenses for 1928. The amount realized from the sale of these tags is approximately one-half of the animal claims filed in that year. No money except the expenses of the administration of this law has been paid out of this fund. Shall we pay in full the claims as filed from the 10th day of August, 1927, the time the law became effective, and pay as far as this money shall go even though it will only pay a very small portion of the claims of 1928, or shall this money be paid on the claims just filed in 1928 and wait until there is a surplus in this fund to pay the claims filed between August, 1927, and January 1, 1928?"

The law relating to the registration of dogs, the dog and kennel fund and the distribution of the fund was generally amended by the 87th General Assembly (112 O. L. 347).

Your question arises by reason of the provisions of Sections 5652-7a and 5846, General Code, as enacted and amended, respectively, by the 87th General Assembly, which provides:

Sec. 5652-7a. "If in any year there should not be sufficient money in the dog and kennel fund, after paying the expenses of administration, to pay the claims allowed for live stock injured or destroyed by dogs, the county commissioners between December 1st and December 15th shall ascertain the number of claims entered and the amount of money allowed for live stock injured and destroyed, and, also the total expense incurred by the administration of the dog law, such commissioners shall also ascertain the amount received for dog and kennel licenses. The license fees for the ensuing year shall then be fixed at such an amount that when multiplied by the number of licenses issued during the previous year the product will equal the aggregate of the claims for injured and destroyed live stock allowed by said county commissioners, plus the balance of said allowed claims remaining unpaid, plus the expense of administration. The increase in said license fee shall always be in the ratio of one dollar for male or spayed female dogs, three dollars for unspayed female dogs and ten dollars for a dog kennel license."

Sec. 5846. "The county commissioners at the next regular meeting after such claims have been submitted as provided in the preceding sections shall examine same and may hear additional testimony or receive additional affidavits in regard thereto and may allow the amount previously determined by the township trustees or a part thereof, or any amount in addition thereto as they may find to be just, to be paid out of the fund created by the registration of dogs and dog kennels and known as the dog and kennel fund. Such claims as are allowed in whole or in part shall be paid by voucher issued by the county auditor at the close of the following calendar month, after such claims have been finally allowed. If the funds are insufficient to pay said claims, they shall be paid in the order allowed at the close of the next calendar month in which there is sufficient funds available in said dog and kennel fund."

My immediate predecessor in a number of opinions construed the various sections of this law, including Section 5652-7a. In one of said opinions, found in Opinions of the Attorney General for the year 1927, Vol IV, page 2457, it was held as disclosed by the syllabus:

"1. By the provisions of House Bill No. 164 (112 v. 347), a board of county commissioners is authorized to expend a surplus remaining in the dog and kennel fund at the close of the year 1927, for the payment of claims heretofore allowed, but unpaid regardless of the year in which such claims were allowed. Such claims should be paid in full in the order in which they have been allowed in so far as such surplus permits.

2. Section 5652-7a, General Code, is applicable only when, in any year, there is not sufficient money in the dog and kennel fund, after paying the expenses of administration, to pay the claims allowed for live stock injured or destroyed by dogs during that year.

3. Claims allowed in former years, but unpaid cannot be considered as a basis for determining whether or not a deficit exists in the dog and kennel fund in any current year. Such claims can be paid only when a surplus exists in the dog and kennel fund after the expenses of administration and the claims allowed for such current year have been paid."

Also in Opinion No. 1823, issued on March 7, 1928, it was held as disclosed by the second branch of the syllabus:

“Claims allowed in former years but unpaid cannot be considered as a basis for determining whether or not a deficit exists in the dog and kennel fund in any current year. Section 5652-7a, General Code, is applicable only when, in any year, there is not sufficient money in the dog and kennel fund, after paying the expenses of administration, to pay the claims allowed for live stock injured or destroyed by dogs during that year.”

As disclosed in the body of the opinions above referred to, the law before its amendment provided that when there were not sufficient amounts in the dog and kennel fund to pay all claims in a given year, the amount available was required to be pro rated. The object of the amendment above referred to was to provide the means whereby the proceeds derived from the registration of dogs should pay all of the live stock claims. It was the purpose of the new legislation to do away with the situation often arising under the former law whereby the claims would only be partly satisfied. The broad statements of the syllabi of the opinions hereinbefore referred to may indicate that in a case such as you mention the claims of 1928 should be first paid, and any claims in 1927 could not be paid until there would be a surplus existing after such payment.

However, a careful analysis of these opinions discloses that in both instances the then Attorney General was dealing with a situation in which the claims involved were claims which accrued and were filed prior to the tenth day of August, 1927. In fact, the claims in those instances arose prior to 1927. Therefore, it must be concluded that the then Attorney General did not have in mind in making the holding above referred to, in so far as the payment of claims of former years was concerned, claims arising after the taking effect of the new law. This appears to be clear for the reason that in the body of the opinion first above mentioned it is stated that:

“By the terms of Section 5652-7a, supra, the legislature has expressed its intent to the effect that the dog and kennel fund should be self-sustaining. If, in any year, a deficit should occur, rendering impossible the payment of claims for live stock injured or destroyed theretofore allowed, but unpaid, a duty is imposed upon the board of county commissioners to increase the license fees for the ensuing year in order to provide sufficient moneys to pay such claims as well as such as may be presented during such year.”

It must be concluded that in the new legislation under consideration herein it was the purpose of the Legislature to provide for the payment of all claims in full and to make provision for the funds to accomplish such purpose. While it is true, as held by my predecessor, claims arising in years prior to August 10, 1927, the date the new law became effective, could not be taken into consideration in determining the license fees for years following, it cannot be concluded that claims are not to be taken into consideration that have arisen since the effective date of the new law. If we were to say that the claims arising after August 10, 1927, could not be first paid out of the receipts of the dog and kennel fund for the year 1928, in view of the fact that the rate had been increased, as authorized by statute, then the very object and purpose of the law is defeated. Such a construction cannot be justified by any logical process of reasoning.

From the foregoing it would appear that the amount realized in 1928 from the registration of dogs, upon the state of facts which you submit, is properly available for the payment of claims arising in 1927 after the effective date of said new law, as well as the claims for the year 1928.

This brings us then to the question as to how the fund is to be distributed. Upon the question of distribution of the fund, it is believed that Section 5846, supra, is dispositive of this question. The last sentence thereof provides:

"If the funds are insufficient to pay said claims, they shall be paid in the order allowed at the close of the next calendar month in which there is sufficient funds available in said dog and kennel fund."

The above provision, of course, indicates that the claims shall be allowed and paid monthly, which procedure evidently has not been followed in the case you present. However, the fact that such procedure has not been followed would in no wise prevent the same rule or order being followed when action is taken by the county commissioners in reference to the payment of such claims. It clearly indicates that the claims are to be paid in full in the order in which they are allowed. Therefore, when the license fee is increased, due to a deficit for the preceding year, it should be used for the payment of the claims of the previous year as well as for the year in which said fund is collected, and the claims should be paid in full for both years in so far as the fund is sufficient, in the order in which they are allowed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

64.

MATRON—COUNTY JAIL—CONTRACT WITH SHERIFF TO SERVE AS
COOK, VALID.

SYLLABUS:

The matron of a county jail cannot be required to cook or otherwise perform services in the preparation of food for prisoners in such jail as a part of her duties as matron. If, however, it is not physically impossible for the matron of the county jail in the particular case to perform the duties of both positions, it is not illegal for such matron to act as jail cook under contract of employment with the sheriff of the county.

COLUMBUS, OHIO, February 5, 1929.

HON. HOWARD GOLDSBERRY, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date in which my opinion is asked on the question therein stated, as follows:

"In this county there is a dispute between the Probate Court and the sheriff concerning the appointment of a matron. The Probate Court contends that the matron cannot hold the additional position of cook in the county jail. In your opinion will it be illegal for the matron to also hold the position as cook for the prisoners?"

Authority for the appointment of matrons of county jails is provided for by Section 3178, General Code, which reads as follows:

"The sheriff may appoint not more than three jail matrons, who shall have charge over and care for the insane, and all female and minor persons