

The copy of the resolution authorizing the president and treasurer to enter into the lease on behalf of the Franklin Board and Paper Company does not show the vote of the directors, nor does said copy contain a certificate that it is a copy of a resolution duly adopted by the board of directors of the corporation.

Your attention is also called to the fact that the resolution instructs the president and treasurer to enter into the lease, but the lease has been signed only by the president.

Upon receipt of a properly certified copy of the resolution authorizing the president and treasurer to enter into said lease, and showing the proceedings of the board of directors with reference thereto, and upon said lease being signed by the treasurer, I shall give the same further consideration.

The leases above set out are returned to you herewith.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

---

768.

APPROVAL, NOTE OF LINTON TOWNSHIP RURAL SCHOOL DISTRICT,  
COSHOCOTON COUNTY—\$1,152.00.

COLUMBUS, OHIO, July 22, 1927.

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

---

769.

CATTLE—TUBERCULIN TESTS—DETERMINATION OF NUMBER OF  
CATTLE OWNERS AND CATTLE—DUTY OF SHERIFF TO ACCOMPANY  
AGENTS OF DEPARTMENT OF AGRICULTURE IF VIOLENCE  
IS THREATENED.

**SYLLABUS:**

1. *By the terms of Section 1121-19, General Code, for the purpose of determining the number of cattle owners and cattle, in any county or township, constituting the per cent required by Section 1121-18, General Code, the county auditor of each county enrolled under the county area eradication plan shall certify to the Department of Agriculture the number of owners of dairy, feeding and breeding cattle and the number of cattle owned by them, in such county or township, as shown in the last assessor's roll prior to such certification. The Department of Agriculture, in determining the per cent required in Section 1121-18, General Code, is required to base its computations upon the report of the auditor made from the latest assessor's roll.*

2. *Where violence or other unlawful acts are threatened, when duly authorized officers, agents or employes of the Department of Agriculture are engaged in the lawful perform-*

*ance of their duties, sheriffs and constables should take such steps as they deem necessary to preserve the public peace, accompanying the representatives of the Department of Agriculture to the premises where they are to perform their duties, if necessary and proper, and should a violation of the law then occur in the presence of such sheriffs or constables it would be the duty of such officer to arrest the offenders.*

COLUMBUS, OHIO, July 22, 1927.

HON. CHARLES V. TRUAX, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

“It is the desire of the Department of Agriculture under the Division of Animal Industry to properly administer the laws (Sections 1121-1 to 1121-25 of the General Code) which have been enacted for the eradication of tuberculosis of cattle.

Some few of our prosecuting attorneys have raised certain questions pertaining to this law and its enforcement and in order to be properly guided and that we may be in a position to correct individual opinions as sponsored by local officials, we would be glad indeed to receive from you an opinion as herewith set forth:

Under Section 1121-19 the question arises which assessor's roll or abstract shall be considered as the *last one*. We are making tuberculin tests of cattle in a number of townships in certain counties of our state at this time. When the first test was made in these townships the 1925 abstract was used to determine the number of cattle in the township. We are now completing the second test of the cattle in these townships and an abstract on the number of cattle for 1927 is now provided by the County Auditor for some of these townships. Shall the department in computing the required number of cattle required before the 90% provision is enforced under Section 1121-18 base its figures upon the 1927 abstract which the auditor has submitted to the Department of Agriculture or the previous figures when the work was started? We expect to enforce the 90% or compulsory test provision on the remainder of the cattle in the township after the completion of the second test which was started in 1927.

Under Section 1110 G. C. it is necessary in some counties to call upon the sheriff for the purpose of assisting our veterinarians in the enforcement of Departmental Order No. 17 enclosed with particular reference to Section 1 of said Order, and which provides for the testing of the remaining cattle in a township or county after 90% have been tested. Veterinarians have been threatened with violence in some instances from owners of cattle who requested the test after 90% of the cattle in the township were tested. Sheriffs have been called upon to protect veterinarians of the Department when making such tests, and in some instances they refused to accompany the veterinarian, stating that violence or assault must first be committed before they are required to act. Please give me an opinion on this point as to the meaning within the law on the section in question. I might mention that an opinion had been given on this question in 1925 by Hon. C. C. Crabbe, former Attorney General but the opinion is questioned by a county prosecuting attorney on the grounds that no reference appears in the records of opinions for 1925. In this connection please advise if the opinions of C. C. Crabbe on certain section of the so-called Riggs Bill, H. B. 287, approved

April 11, 1925, have any legal status if not published in the Attorney General's annual report.

The last paragraph of Section 1121-18 of the General Code provides that whenever ninety per cent of the cattle of a county or township have been quarantined or tested the Department may through its authorized agents enter the premises and test the remaining cattle without the consent of the owner, etc. We have a township in which more than ninety per cent have been tested. Among the tested cattle in the township are some that were tested officially by representatives of the Department in an adjacent county and had recently moved into the township in question; also some cattle are transient cattle, moving back and forth over township or county lines; however, they also are tested. Shall these classes of cattle be considered as belonging to the township where the test is in progress when computing the ninety per cent provision which makes compulsory the testing of the remaining 10%?

You will please understand that these questions have been raised by certain local officials with whom the Department must co-operate in the enforcement of this law."

Section 1121-19, General Code, about which you inquire, provides:

"For the purpose of determining the number of cattle and the owners of such in the county or township constituting the per cent required by the preceding section, the county auditor of each county which has been enrolled under the county area eradication plan shall certify to the department of agriculture the number of owners of dairy, feeding and breeding cattle and the number of cattle owned by them, in such county or township as shown in the last assessor's roll."

Section 1121-18, General Code, to which reference is therein made, provides:

"When a majority of the resident cattle owners, representing seventy-five per cent of the cattle owned in any county or township, petition upon forms approved by the department of agriculture for a tuberculin test of the cattle in a county or township, such petition may be granted and the department of agriculture may authorize, if funds are available for the conduct of the work, the assignment of one or more veterinarians to the county or township for the purpose of applying a tuberculin test. The petitions for the test shall be presented to the department of agriculture and when such petitions have been approved by the department of agriculture, said department shall notify the board of county commissioners of such county of the fact that owners of cattle, representing seventy-five per cent of the cattle in the county or township, are petitioning for the tuberculin test. The department of agriculture shall transmit such petitions to the county auditor of the county where the petitions were signed. Such petitions shall be filed in the office of the county auditor, where they shall be open to public inspection at all times. The provisions of this section shall, when carried out, be known as the area plan of testing.

After seventy-five per cent of all the cattle in a county or township enrolled in the area plan have been tuberculin tested, the department of agriculture shall cause to be published a notice of such fact in two newspapers of general circulation in the county or township, and after a period of thirty days from the publication of the notice that seventy-five per cent of the cattle have been tuberculin tested, the department of agriculture may place

under quarantine all herds of dairy, feeding and breeding cattle in the county or township that have not been officially tuberculin tested. All owners of cattle quarantined under the provisions of this section of the General Code, shall be allowed the same privileges of petitioning the department of agriculture for the application of the tuberculin test and the removal of the quarantine as provided for in Sections 1121-1 and 1121-5 of the General Code.

The department of agriculture may make use of the quarantine as provided for in this section of the General Code, whenever seventy-five per cent of the cattle of a county or township have been tested, whether by the area plan of testing or any other approved plan of testing.

Whenever ninety per cent of the cattle of a county or township have been quarantined or tested as herein provided, the department of agriculture may, through its authorized veterinarians, enter the premises where the remaining ten per cent are kept and test all cattle and order the reactors destroyed without the consent of the owners, but the compensation or indemnity shall be paid as in other cases."

The first paragraph of the section last above quoted provides for the establishment of the area plan of testing cattle and for the voluntary petitioning by a majority of the resident cattle owners, representing seventy-five per cent of the cattle owned in any county or township, that the tuberculin test be applied to their cattle.

As provided in Section 1121-19, supra, for the purpose of determining the number of cattle and cattle owners in such county or township constituting the per cent required by Section 1121-18, supra, it is made the duty of the county auditor of each county enrolled under the county area eradication plan to certify to the department of agriculture the number of owners of dairy, feeding and breeding cattle and the number of cattle owned by them in such county or township, such certification being prepared by such county auditor from the returns as shown in the last assessor's roll of the county just previous to such certification.

The department of agriculture, having determined by reference to such auditor's certification, that a petition contains a majority of the resident cattle owners, representing seventy-five per cent of the cattle owned in the petitioning district, may grant the prayer of such petition and may authorize, if funds be available for the conduct of the work, the assignment of one or more veterinarians to apply the tuberculin test.

The second and third paragraphs of Section 1121-18, supra, provide that after seventy-five per cent of all the cattle in a county or township enrolled in the area plan have been tuberculin tested, whether by area plan or otherwise, the Department of Agriculture may, after a period of thirty days after publication in two newspapers that seventy-five per cent of the cattle in such county or township have been tuberculin tested, place under quarantine all herds of dairy, feeding and breeding cattle in the county or township, that have not been officially tuberculin tested.

These two paragraphs do not provide for compulsory testing, but only provide for the placing under quarantine of all cattle in the petitioning district that have not been tuberculin tested.

The last paragraph of Section 1121-18, supra, provides that whenever ninety per cent of the cattle of a county or township have been quarantined or tested, as therein provided, the Department of Agriculture, through its authorized agents, may enter the premises, where the remaining ten per cent are kept and test all cattle and order the reactors destroyed without the consent of the owners, but compensation or indemnity shall be paid as in other cases.

Applying the foregoing and answering your first question specifically I am of the opinion that upon such a petition being presented to your department reference must be made to the latest certification of the county auditor, it being his duty to certify to the Department of Agriculture the number of owners of dairy, feeding and breeding

cattle and the number of cattle owned by them in such county or township as shown in the last assessor's roll prior to the date of such certification, in order that your department may determine whether a majority of the resident cattle owners representing seventy-five per cent. of the cattle owned in the petitioning district appear on the petition. If the test is begun but not completed within the time before another and later report of such cattle owners and cattle in such county or township is available, in order to determine whether ninety per cent. of the cattle in such district have been quarantined or tested, reference must be made to the report or certification of the auditor based upon the last assessor's roll which is then available. By that I mean in determining whether or not ninety per cent. of the cattle of a township or county have been quarantined or tested the Department of Agriculture should base its computation upon the report of the number of cattle and cattle owners certified by the auditor of the county from the last assessor's roll.

2. In answer to your second question your attention is directed to Sections 1121-5, 1121-18, 1121-25 and 1111 of the General Code, which respectively provide in part as follows:

"Sec. 1121-5. Whenever the department of agriculture has evidence to believe that tuberculosis exists in a herd of cattle, the department may detail an authorized agent or agents to enter upon the premises of the owner and quarantine the animal or animals exposed and suspected of being diseased.  
\* \* \*"

"Sec. 1121-18. Whenever ninety per cent. of the cattle of a county or township have been quarantined or tested as herein provided, the department of agriculture may, through its authorized veterinarians, enter the premises where the remaining ten per cent. are kept and test all cattle. \* \* \*"

"Sec. 1121-25. The provisions of Sections 1108 to 1121 of the General Code shall not apply to tuberculous cattle when the provisions of such sections are in conflict with sections 1121-1 to 1121-24, but the provisions of said Sections 1108 to 1121 *shall apply when necessary to carry out the provisions of Sections 1121-1 to 1121-24.*" (Italics the writer's.)

"Sec. 1111. In the enforcement of laws relating to the promotion and protection of the live stock industry of the state, and the rules and regulations adopted by the board of agriculture, or the secretary of agriculture, their authorized officers, agents or employes may enter a building where live stock is housed, a railway car, boat or other conveyance, used in the transportation of live stock, and upon any premises, public or private."

By and under the authority conferred by these sections of the General Code ample provisions are made whereby the duly authorized officers, agents and employes of the Department of Agriculture are given the right of entry upon premises, public or private, in promoting and protecting the live stock industry of the state. In the event that an owner interferes with, obstructs or denies such officers, agents or employes the right of entry to his premises or to proceed with the testing of his cattle, two remedies are available.

First: Such duly authorized officers, agents or employes may file an affidavit in any court of competent jurisdiction under Section 1121-22, General Code, which provides:

"Whoever treats a bovine animal with a material or substance for the purpose of interfering with a tuberculin test, or with a reaction to a tuberculin test, or who interferes with the inspector who is making a test, or who alters or changes an ear tag for the purpose of concealing the identity of an animal,

or who otherwise attempts to interfere with the identification of tubercular cattle, shall be fined not less than one hundred dollars or more than three hundred dollars, or be imprisoned not more than one year, or be punished by both fine and imprisonment." (Italics the writer's.)

and thus invoke the jurisdiction of a proper tribunal to have imposed the penalty provided by law.

I am informed that a number of veterinarians engaged in the tuberculin test are also inspectors of the Bureau of Animal Industry of the United States. As regards these authorized agents of your department while acting as inspectors of the Bureau of Animal Industry of the United States the provisions of Sections 5806 and 5807, General Code, apply, viz:

"Sec. 5806. An inspector of the bureau of animal industry of the United States may inspect, quarantine and condemn animals affected with a contagious, infectious or communicable disease, or suspected of being so affected, or that have been exposed thereto; and may enter upon any ground or premises in the state for such purposes."

"Sec. 5807. Such inspector may call upon any constable and peace officer to assist in discharging his duties and carrying out the provisions of Section three of an act of Congress entitled 'An act for the establishment of a bureau of animal industry to prevent the exportation of diseased cattle and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals,' and such officers must assist when so requested. The inspector shall have like powers and protection as a peace officer while engaged in the discharge of his duties."

Second: Section 1110, General Code, to which you refer, provides as follows:

"Sheriffs and constables in the several counties shall execute all lawful orders of the board of agriculture or the secretary of agriculture in such counties, and shall immediately communicate to such secretary any notice given them under the provisions of law relating to live stock."

An examination of the legislative history of this section shows that on April 29, 1885 (82 O. L. 176), the legislature of Ohio passed an act entitled:

"An act to suppress and prevent dissemination of epizootic and communicable diseases of domestic animals in the State of Ohio,"

wherein a board of live stock commissioners was created whose duties were to use all proper means to prevent the spread of dangerous and fatal diseases among domestic cattle. Any person who had in his possession or care any animal affected with a dangerously contagious or infectious disease and who did not, without unnecessary delay, make known the same to said board or to the sheriff or constable of the proper county, to be by him communicated to said board was, upon conviction, subject to a fine.

On March 16, 1887 (84 O. L. 90), Section 4 of the above entitled act was amended, providing *inter alia*:

"\* \* \* It shall be the duty of all sheriffs and constables to execute within their several counties all lawful orders of the said commissioners."

Successive legislatures at various times amended the above entitled act and it as well as others in *pari materia* now appear as Sections 1112, 1113, 1108 and 1110 of the General Code.

Section 1098, General Code, authorizes the Board of Agriculture (now Department of Agriculture) to adopt reasonable and proper rules and regulations to govern its proceedings and to regulate the manner of all investigations, inspections and hearings not otherwise provided for. Section 1100, General Code, authorizes the Board of Agriculture (now Department of Agriculture) to conduct investigations, inquiries and hearings with power to take depositions, issue subpoenas, compel attendance of witnesses and the production of books, etc. Section 1102, General Code, permits the Board of Agriculture (now Department of Agriculture) to require, by subpoena to be served in the same manner that a summons is served in a civil action, the production of books, etc. Section 1112, General Code, provides, *inter alia*, that if a person owns or has in charge an animal which he knows or has reason to believe is affected with a dangerously contagious or infectious disease, he shall give notice of such fact immediately to the Secretary of Agriculture or to the sheriff or a constable of the proper county.

The foregoing indicates the purpose of the provisions of Section 1110, *supra*, and what "lawful orders" sheriffs and constables in the several counties shall execute. This section does not, in itself, impose a duty on a sheriff or constable to accompany any duly authorized officer, agent or employe of the Department of Agriculture to premises whereon violence or interference is threatened and aid such officers, agents or employes in their peaceable entry and performance of their duties.

However, your attention is directed to Sections 2833, 3340 and 13492, General Code, respectively providing in part as follows:

"Sec. 2833. Each sheriff shall preserve the public peace and cause all persons guilty of breach thereof, within his knowledge or view to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the common pleas court of the proper county and to commit them to jail in case of refusal. \* \* \*"

"Sec. 3340. Each constable shall apprehend, on view or warrant, and bring to justice, all felons, disturbers and violators of the criminal laws of this state, and suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and, generally, keep the peace in his proper county."

"Sec. 13492. A sheriff, deputy sheriff, constable, marshal, deputy marshal, watchman or police officer, shall arrest and detain a person found violating a law of this state, or an ordinance of a city or village, until a warrant can be obtained."

Under the above sections it is plainly the duty of sheriffs and constables to preserve the public peace in the counties in which such officers are serving.

Answering your second question specifically it is my opinion therefore that where violence or other unlawful acts are threatened, when the duly authorized officers, agents or employes of the Department of Agriculture are engaged in the lawful performance of their duties, the sheriffs and constables should take such steps as they deem necessary to preserve the public peace, accompanying the representatives of the Department of Agriculture to the premises where they are to perform their duties, if necessary and proper, and should a violation of the law then occur in the presence of such sheriffs or constables it would be the duty of such officer to arrest the offenders. There is no more justification for a sheriff or constable to refuse to perform his duty in a case of this kind than there would be in the case of any other offense committed in the presence of such officer.

3. In answer to your third inquiry you are advised that by the provisions of Section 333 of the General Code, the Attorney General is "the chief law officer for the state and all its departments," the section further providing that "no state officer, board, or the head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys at law." The provisions of this section are plain,

and all officers, whom the law makes it the duty of the Attorney General to advise, should be guided by and follow his advice, whether such advice be given in a formal opinion, by letter or otherwise.

4. As stated in the answer to your first inquiry, Section 1121-19, supra, provides that for the purpose of determining the number of cattle and cattle owners in the county or township in which the tests are to be made reference must be made to the latest available certification made by the auditor of such county, it being such officer's duty to so certify from the figures shown in the last assessor's roll.

The auditor's certificate is designated by statute as the basis upon which your department shall compute whether or not ninety per cent of the cattle in any township or county have been quarantined or tested. If the transient cattle or newly acquired cattle you refer to appear on the auditor's certification as being owned in the township or county which is being then tested, such cattle should be considered in determining whether or not ninety per cent. of the cattle in a township or county have been quarantined or tested. However, if such cattle do not appear on the certification of such auditor made from the last assessor's roll their number should not be considered in such determination. As stated in answering your first question in determining whether or not ninety per cent of the cattle of a township or county have been quarantined or tested the guide your department should follow is the certification of the auditor of the county in question as to the number of owners of dairy, feeding and breeding cattle and the number of cattle owned by them, which certification must be made from the last assessor's roll.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

770.

STATE BOARD OF EMBALMING EXAMINERS—ARE AUTHORIZED TO EXPEND "CONTRIBUTIONS" APPROPRIATED BY 87TH GENERAL ASSEMBLY FOR MEMBERSHIP DUES IN THEIR NATIONAL ASSOCIATION.

SYLLABUS:

*Funds appropriated by the 87th General Assembly to the State Board of Embalming Examiners for the purpose of "contributions" may be lawfully contributed to the Conference of Embalming Examining Boards of the United States, as membership dues of the State Board.*

COLUMBUS, OHIO, July 22, 1927.

*The State Board of Embalming Examiners of Ohio, Columbus, Ohio.*

GENTLEMEN:—I have your letter of recent date requesting my opinion as follows:

"This Board has been a member of the Conference of Embalming Examining Boards of the United States for many years. We have funds on hand appropriated for the present biennium by the House and Senate Finance Committees for the payment of our dues which amount to \$25.00 per year but last year when a voucher was drawn same was returned from the auditor stating the former Attorney General Crabbe had made a ruling which prevented funds being paid for this service.