

attended a high school maintained by the district of her residence during these first two years, the rural board of education mentioned is liable for tuition to the Port Clinton High School for the current year.

In answer to your second question, I am of the opinion that the rural school district mentioned, is liable for the tuition of the pupil in question for the current year.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4112.

COUNTY COMMISSIONERS—RENDERING AID TO PERSON BITTEN BY
DOG AFFLICTED WITH RABIES—NO RIGHT TO REIMBURSEMENT
FROM OWNER OF DOG.

SYLLABUS:

Where the county commissioners have reimbursed a person bitten by a dog afflicted with rabies, for medical attention rendered necessary thereby, there is no legal authority for a recovery by such commissioners against the owner for reimbursement of such sum, whether the owner had obtained a license for such dog or not.

COLUMBUS, OHIO, February 27, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion relative to the following question:

“An unlicensed dog, which, under the law, should have been licensed, injured a child. The county commissioners, under the statute, provided and paid for the hydrophobia treatment, and now the commissioners would like to know whether or not they are entitled to proceed against the owner of the dog, for reimbursement.”

Section 5851 of the General Code, reads as follows:

“A person bitten or injured by a dog, cat or other animal afflicted with rabies, if such injury has caused him to employ medical or surgical treatment or required the expenditure of money, within four months after such injury and at a regular meeting of the county commissioners of the county where such injury was received, may present an itemized account of the expenses incurred and amount paid by him for medical and surgical attendance, verified by his own affidavit and that of his attending physician; or the administrator or executor of a deceased person may present such claim and make such affidavit. If the person so bitten or injured is a minor such affidavit may be made by his parent or guardian.”

I find no language in this section making the liability contingent upon whether or not the owner had procured a license for the dog.

Your question, however, goes somewhat further. You inquire whether the county commissioners having paid the medical expense of the injured person, may recover the same from the owner of the dog. While Sections 5851 and 5852 of the General Code authorize the county commissioners, when a person has been bitten by a dog afflicted with rabies, to reimburse such person for medical attention rendered necessary by reason of such injury in an amount not to exceed two hundred dollars, I find nothing in such sections authorizing the county commissioners to take an assignment of the injured person's claim in whole or in part.

I am unable to ascertain from your inquiry in what manner you believe the fact that the dog was unlicensed would alter the situation, for the statute only authorizes the expenditure of funds not in excess of two hundred dollars when the dog was suffering from rabies, and does not make it a condition precedent that the dog biting the person be either a licensed or an unlicensed dog.

Since the statute authorizes the county commissioners to perform a duty which by reason of another statute (Section 5840 General Code) constitutes a liability of the owner, can the county commissioners recover their expense from the owner?

In a number of cases where the legislature has authorized the performance of certain duties, it has specifically authorized the governmental agency to recover from the owner the cost of the performance of that duty which the governmental agency performed in his behalf, i. e., the cutting of noxious weeds (Sections 5944, 7150, 7152 and 7153, General Code), nuisances (Section 3655, General Code), and fire hazards (Section 836-2, General Code).

In the statutes with reference to the reimbursement of a person for expenses which he has incurred by reason of having been bitten by a dog suffering from rabies it is significant that there is no mention of a right of recovery from the owner of the dog.

In the third paragraph of the syllabus, of *Ohio Savings & Trust Company vs. Schneider*, 25 App., 259, it is held that:

"Courts cannot read into a statute that which does not appear therein; it being presumed that the lawmakers placed in the statute all that was intended."

See also *Board of Education vs. Boal*, 104 O. S., 482, *Elmwood Place vs. Schanzle*, 91 O. S., 354, *Stanton vs. Realty Company*, 117 O. S., 345, 349.

Specifically answering your inquiry, I am of the opinion that, where the county commissioners have reimbursed a person bitten by a dog afflicted with rabies, for medical attention rendered necessary thereby, there is no legal authority for a recovery by such commissioners against the owner for reimbursement of such sum, whether the owner had obtained a license for such dog or not.

Respectfully,

GILBERT BETTMAN,

Attorney General.