

and such notice shall thereupon be given as is provided for upon the filing of a petition for such improvement and like proceedings shall be had by such commissioners or joint board thereof as in the case of the filing of a petition before them asking for such improvement."

In an earlier opinion of this department found in Opinions of Attorney-General, 1916, Vol. II, p. 1239, it was held among other things, as shown by the first headnote:

"Neither section 1 of the Cass highway law, section 6860 G. C., nor section 19 of the act, section 6878 G. C. authorizes county commissioners to appropriate property for the sole purpose of widening a main market road."

This conclusion of my predecessor was clearly correct; for it is beyond question that the terms of section 6860 must be read into the entire series of sections down to and including section 6878 G. C. with the result that the authority conferred on the county commissioners by section 6862 et seq. does not extend to inter-county highways and main market roads.

In view of the foregoing considerations, in connection with the fact that no other statutes have been found having a bearing on the subject, it is the conclusion of this department that your county commissioners are without power to purchase or appropriate land for the proposed widening of the section of inter-county highway in question.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1887.

DOG REGISTRATION LAW—WHERE NO HUMANE SOCIETY IN COUNTY—WHEN IT IS DUTY OF COUNTY COMMISSIONERS TO TRANSFER MONEYS IN DOG AND KENNEL FUND TO COUNTY BOARD OF EDUCATION—BASIS OF COMPUTATION FOR SUCH TRANSFER SHOULD BE TOTAL AMOUNT OF FUND RATHER THAN YEARLY RECEIPTS.

1. *Under the provisions of the dog registration law, in a county in which there is not a humane society, it is the duty of the county commissioners, at their December session, to transfer any sum that remains in the dog and kennel fund in excess of one thousand dollars, after payment of the expenses of operation of the law as provided in section 5652-13 G. C. and the animal claims as provided in section 5653 G. C., to the county board of education.*

2. *The basis of computation for such transfer should be the total amount of the fund rather than the yearly receipts. "Such year" as used in section 5653 G. C. relates to the "fund" of such year rather than the receipts for such year.*

COLUMBUS, OHIO, March 2, 1921.

HON. ROBERT E. MARSHALL, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—Your recent communication is as follows:

"There is in the dog and kennel fund of Shelby county something over \$3,000, and the county board of education claims that it should receive all of this fund in excess of \$1,000. The county commissioners think that the board of education is entitled to what is left in excess of \$1,000 each year. See section 5653 G. C., 108 Ohio Laws, p. 537, which reads:

'If there remains more than \$1,000 of the dog and kennel fund arising from the registration of dogs and dog kennels for *such year* the excess from such December session shall be transferred and disposed of as follows:' then follows the manner in which it should be disposed.

I should like to have your opinion on the matter."

From the statements in your letter it would seem that the sum, which you say exceeds three thousand dollars, now in the dog and kennel fund of your county represents more than the receipts for one year; or it may be the question you have in mind is whether or not, in figuring the excess over one thousand dollars each year, the yearly receipts are added to the one thousand dollars retained in the fund from the previous year, or whether, in such computation, the yearly receipts only are considered. It is assumed that there is not a society for the prevention of cruelty to children and animals or other society as provided by sections 10062 to 10067, inclusive, of the General Code, as referred to in section 5653 G. C.

Section 5653 G. C., under which your question arises, provides:

"After paying all horse, sheep, cattle, swine, mule and goat claims at the December session of the county commissioners, if there remain more than one thousand dollars of the dog and kennel fund arising from the registration of dogs and dog kennels for such year the excess at such December session shall be transferred and disposed of as follows: in a county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized as provided by law, which has one or more agents appointed in pursuance of law, or any other society organized as provided by sections 10062 to 10067, inclusive, of the General Code, that owns or controls a suitable dog kennel or place for the keeping and destroying of dogs which has one or more agents appointed and employed in pursuance of law, all such excess as the county commissioners deem necessary for the uses and purposes of such society by order of the commissioners and upon the warrant of the county auditor shall be paid to the treasurer of said society, and any surplus not so transferred shall be transferred to the county board of education fund at the direction of the county commissioners."

It is believed to be clear that under the provisions of the section just quoted, in the event that there is no society as described in this section in a county, it is the duty of the commissioners after paying the sheep, etc., claims referred to therein, when the remaining dog and kennel fund exceeds one thousand dollars, to transfer such excess to the board of education. For the purpose of this distribution, the fund will be the yearly receipts plus whatever amount was in the fund, properly retained at the time of the former transfer. It is believed that the "fund" which arises from the registration of dogs for "such year" refers to all sums that are in the fund, whether from the yearly receipts or otherwise. In other words, "such year" relates to the fund, rather than the yearly receipts, and the language "arising from the registration of dogs and dog kennels for such year" is descriptive of the fund in that it indicates the source of the dog and kennel fund generally. This language was first used by the legislature in the amendment of section 5653 G. C., 107 O. L. 534. It will be observed that the law as enacted in 107 O. L. 534 provided that costs collected by reason of the impounding of dogs should be placed to the credit of the general county fund. It is believed that this provision accounts for said language, it being employed to distinguish the two funds arising under the registration law. Therefore, it would seem that the history of the law does not indicate that it was the intent of the legislature by the use of said

language to require the dog and dog kennel fund to be divided for the purpose of computing the "excess" referred to therein.

It is believed that the only difficulty presented is in determining the period which constitutes the year for which receipts shall be distributed. Under the requirements of section 5653 G. C., if there remains more than one thousand dollars in said dog and kennel fund for "such year" after paying the sheep, etc., claims, the commissioners must transfer the same at their December session. Undoubtedly this session of the commissioners mentioned refers to the regular December meeting, which is required under the provisions of section 2401 G. C. to commence on the first Monday of said month.

Under section 5652 G. C., applications for registrations of all dogs must be made, accompanied with payment of the fees, before the first day of January for the "following year." In other words, under the requirements of the law all applications for registrations should have been made and the fees paid during the year 1920 for the year 1921, that is to say, the fees must be paid and the applications made yearly in advance. However, under section 5652-2 G. C. there is an exception to this rule in those cases in which one becomes the owner or harbinger of a dog required to be registered during the year after the first of January, in which case the payment goes into the fund of the year in which it was paid and relates back to the beginning of the year.

It therefore follows that at the December session of the commissioners, after paying the claims which they are required to pay from the dog and kennel fund, if the remainder of the fund for "such year" exceeds one thousand dollars, such excess should be distributed. Strictly speaking, the fund on said date should contain all the receipts that have accumulated in said fund since the distribution of the preceding year at the regular December meeting, in addition to any amount that may be in said fund by reason of the sum properly retained for said previous year, and less any amounts which have properly been paid therefrom. Of course, it is contemplated that the expense necessary to carry out the provisions of the dog registration law, as referred to in section 5652-13 G. C., shall be paid from the fund in addition to the animal claims.

It is believed that if the commissioners in the case under consideration failed to make a yearly transfer in accordance with the provisions of the law, inasmuch as the fund still remains, they may and should take such action as will accomplish the same results as if the yearly distributions had been properly made. In other words, it is the intent of the law that the commissioners shall make a transfer of the fund at their regular December meeting of each year and that when said transfers are properly made there shall be remaining in said dog and kennel fund not more than one thousand dollars. It therefore follows that if proper distribution had been made in the present case, only one thousand dollars would have been in the dog and kennel fund at the last December meeting of the commissioners after distribution had been made.

In specific answer to your inquiry you are advised that it is the duty of the commissioners, in the event there are no societies as described in section 5653 G. C. in the county, at their December meeting to transfer all that part of the dog and kennel fund which exceeds one thousand dollars, after the payment of the claims referred to in said section and any other expense in connection with the operation of the law as referred to in section 5652-13 G. C., to the board of education.

Respectfully,

JOHN G. PRICE,

Attorney-General.