

Ohio, in and by which there are leased and demised to the State of Ohio, acting through you as Director of the Department of Public Works, certain premises for the use of the Sales Tax Division of the Tax Commission of Ohio.

By this lease, which is one for the term of eight months, commencing on the first day of May, 1938, and ending on the last day of December, 1938, and which provides for the monthly rental of \$42.50, there are leased and demised to the State of Ohio for the use of the Sales Tax Division Rooms Nos. 514 and part of 515 situated on the fifth floor of The Walpark Realty Company Building at the corner of Park Avenue and Walnut Street in the city of Mansfield, Ohio.

This lease has been properly executed by The Walpark Realty Company, the lessor, by the hand of its Secretary. I likewise find that this lease and the provisions thereof are in proper form.

The lease is accompanied by contract encumbrance records Nos. 46 and 80 which have been executed in proper form and which show that there are unencumbered balances in the appropriation account sufficient in amount to pay the monthly rentals under this lease for the months of May and June, 1938. This is a sufficient compliance with the provisions of Section 2288-2, General Code. This lease is accordingly approved by me and the same is herewith returned to you.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2614.

DOG AND KENNEL FUND—RECOVERY MAY BE MADE IN ANY YEARS FOR COST OF ADMINISTERING LAW, WITH REFERENCE TO LICENSE, IN EXCESS OF 50% PER ANNUM—COUNTY COMMISSIONERS—NOT AUTHORIZED TO CONTRACT WITH ANY PRIVATE SOCIETY OR ORGANIZATION FOR ENTIRE ADMINISTRATION OF LAW.

SYLLABUS:

1. *Recovery may be made in favor of the dog or kennel fund for amounts disbursed in any year for cost of administering the law with respect to the licensing of dogs and kennels in excess of the fifty per cent maximum provided in Section 5652-13, General Code.*

2. *Neither under the provisions of Section 5652-8, General Code, nor under the provisions of any other section, are the county commis-*

sioners authorized to contract with any private society or organization of any kind for the entire administration of the law relating to the licensing of dogs and kennels.

COLUMBUS, OHIO, June 20, 1938.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: Your letter of recent date is as follows:

"We are enclosing for your consideration copies of resolutions adopted by a board of county commissioners, providing for the appointment and fixing the compensation of the dog warden, and copy of agreement with a society for the protection of animals, employing said society for the taking, impounding, housing, feeding, and destroying of dogs, and administering the dog law.

Since May 1, 1933, the county has paid to such society flat sums monthly, and additional amounts for equipment. All moneys which the society receives are deposited in a special bank account and are disbursed by checks signed by the officials of the league.

An audit of the amounts disbursed by the society furnished proof that the actual cost of administering the dog law is the full amount which the county pays over to the society, and includes the cost of other activities of the society.

Due to the method of payment, practically the entire receipts of the Dog and Kennel fund for the calendar year are paid to the society.

May we respectfully request your opinion upon the following questions:

1. May findings for recovery be made in favor of the Dog and Kennel fund for the amount disbursed each year in excess of the fifty per cent maximum provided in Section 5652-13, General Code?

2. Does Section 5652-8, General Code, authorize the county commissioners to contract with the society for the entire administration of the dog law, or only for the housing, feeding and disposition of dogs?

3. In the event that contract could be made for the entire administration of the law, is the society to be permitted to make any expenditures that may be expeditious to it; or is it to be limited to expenditures that could be legally made from the

county treasury were the county commissioners administering the dog law?

This question is asked for the reason that under this arrangement the county is paying a monthly salary to an attorney who is acting as legal adviser to the society; the monthly compensation of employes of the society who do no work in connection with the enforcement of the dog law; the county is paying for uniforms and badges for so-called deputy dog wardens who have not been appointed by the county commissioners; the county is paying for garage rent and telephone at the residence of the dog warden; for liability and property damage insurance premiums on trucks and automobiles purchased with public funds, used by the society; for general liability insurance on premises occupied by the society, etc.

In the resolution adopted by the commissioners appointing the county dog warden, the compensation of such warden was fixed at \$2500.00 per year. This compensation is not drawn directly from the Dog and Kennel Fund, but the warden is included on the payroll of the society in excess of the amount fixed by the commissioners, and is paid from the funds received by the society as a part of the cost of administering the dog laws.

May a finding for recovery to the Dog and Kennel fund be made for the compensation paid to such warden in excess of the amount fixed by the county commissioners?"

The pertinent portions of the resolutions attached to your communication may be summarized as follows:

The first resolution passed April 14, 1933, provided for the appointment of a certain person as chief dog warden at a salary of \$2500.00 per year and for the furnishing of a bond by such appointee. Such resolution contained further provision for the appropriation of surplus moneys in the dog and kennel fund under authority of Section 5653, General Code, which section provides for disposition of surplus moneys remaining in such fund after paying all costs of administering the dog licensing law and after paying all claims for animals injured by dogs, as therein provided. This resolution further authorized payment from the dog and kennel fund to the Cleveland Animal Protective League the sum of fifty cents per day for housing and feeding a dog and the sum of fifty cents for selling or destroying a dog.

This resolution was amended by a subsequent resolution passed May 29, 1933, which reappointed the same person as chief dog warden at the same salary and provided for the same bond as theretofore. This amending resolution contains the further provisions which should be quoted:

"BE IT FURTHER RESOLVED that the Cleveland Animal Protective League shall be paid actual cost as set forth in agreement between the County of Cuyahoga and the Animal Protective League, copy of said agreement being as follows:

AGREEMENT

THIS AGREEMENT made this 29th day of May, 1933, by and between the County Commissioners of Cuyahoga County and The Cleveland Animal Protective League,

WITNESSETH: THAT,

Said County Commissioners hereby employ The Cleveland Animal Protective League, which accepts such employment, for the taking, impounding, housing, feeding and destroying of the dogs of said County, according to law, and for administering the dog law in said County from and after May 1, 1933; and agree to pay to said The Cleveland Animal Protective League as compensation therefor the entire actual cost of doing such work. Said compensation is fixed at Five Thousand Dollars (\$5,000.00) per month commencing May 1, 1933, and shall be subject to adjustment quarterly on the basis of the actual cost of doing said work. The County Commissioners shall have the right to inspect all of the books of The Cleveland Animal Protective League at any and all times upon demand. The Cleveland Animal Protective League agrees to permit the use of its premises, buildings and equipment on Willey Avenue, in Cleveland, Ohio, for this work without charge to the county, the reasonable expense of upkeep and repair to said premises, buildings and equipment being chargeable as part of the cost of administration of the dog law as contemplated by this agreement. New equipment, if any, shall be purchased with the approval of the County Commissioners, and such new equipment bought under this agreement with County Funds shall, at the expiration of this agreement belong to said Cuyahoga County. Said County agrees forthwith to deliver to The Cleveland Animal Protective League for use during the period of this agreement its property and equipment heretofore used in said work by The Society for the Prevention of Cruelty to Animals. This agreement may be terminated by either party upon thirty days' notice."

Considering your first question, Section 5652-13, General Code, pro-

vides that all dog registration fees shall be paid into the dog and kennel fund and be used for the purpose of administering the dog and kennel law, carrying out the provisions thereof, paying the compensation of county dog wardens and other necessary employes and for the payment of animal claims, as provided in Sections 5840 to 5849, both inclusive, of the General Code, and in accordance with the provisions of Section 5653 of the General Code. These provisions of such Section 5652-13, General Code, are followed by the following proviso:

“Provided, however, that the county commissioners by resolution shall appropriate sufficient funds out of the dog and kennel fund, said funds so appropriated not to exceed 50% of the gross receipts of said dog and kennel fund in any calendar year, not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs in accordance with the provisions of G. C. Section 5652 and, supplemental sections.”

The foregoing proviso was considered in an opinion of this office appearing in Opinions of the Attorney General for 1927, Vol III, Page 1782, the syllabus of which is as follows:

“By the terms of Section 5652-13, General Code, the amount of money which the board of county commissioners may lawfully appropriate out of the dog and kennel fund for the salary of a county dog warden and deputies is a matter within its discretion; but in no event may such board appropriate more than fifty per cent of the gross receipts of such fund for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs in accordance with the provisions of Section 5652 and supplemental sections of the General Code, three-tenths of which amount so appropriated may be expended by the county auditor for registration tags, blanks, records and clerk hire. The remaining fifty per cent of such gross receipts shall be expended for claims allowed for live stock injured or destroyed, which amount, if insufficient in any year may be supplemented and increased as provided in Section 5652-7a, General Code.”

The foregoing opinion was cited and followed in an opinion rendered by this office March 21, 1936, being Opinion No. 5279, the syllabus of which reads:

“The maximum amount which may be expended by a board of county commissioners in any year for administering the law relative to the licensing of dogs is fifty per cent of the gross receipts of the dog and kennel fund for such year as provided in Section 5652-13, General Code, and such board of county commissioners may not consider any unexpended balances in such fund remaining therein from any previous year in computing this maximum amount which may be appropriated for administration expenses.”

One of the bases for the conclusion of the then Attorney General in the rendition of the 1936 opinion, *supra*, was that under the provisions of Section 5652-7a, General Code, authorizing an increase in the dog and kennel license fees for any ensuing year after the amount available for payment of live stock claims has been depleted as therein provided, an increase in the cost of administration beyond the fifty per cent provided by Section 5652-13, *supra*, might result in an increase in the dog and kennel license fees in any county, a situation clearly unauthorized by the General Assembly. An opinion appearing in *Opinions of the Attorney General for 1927, Vol IV, page 2462*, touching this point, was cited and followed.

Under authority of the foregoing opinions, in which I concur, I have little difficulty in concluding that recovery may be made in favor of the dog and kennel fund for amounts disbursed in any year for cost of administering the law with respect to the licensing of dogs and kennels in excess of the fifty per cent maximum provided in Section 5652-13, General Code.

In your second question, you ask whether or not a board of county commissioners may contract for the entire administration of the dog law. Section 5652-8, General Code, provides as follows:

“County commissioners shall provide nets and other suitable devices for the taking of dogs in a humane maner, and except as hereinafter provided, also provide a suitable place for impounding dogs, and make proper provision for feeding and caring for the same, and shall also provide humane devices and methods for destroying dogs. Provided, however, that in any county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized as provided by law, and having one or more agents appointed in pursuance to law, and maintaining an animal shelter suitable for a dog pound and devices for humanely destroying dogs, the county commissioners shall not be required to furnish a dog pound, but

the county dog warden shall deliver all dogs seized by him and his deputies to such society for the prevention of cruelty to children and animals at its animal shelter, there to be dealt with in accordance with the law, and the county commissioners shall provide for the payment of reasonable compensation to such society for its services so performed out of the dog and kennel fund. Provided, further, that the county commissioners may designate and appoint any officer or officers regularly employed by any society organized as provided by G. C. Sections 1062 to 10067, inclusive, to act as county dog warden or deputies for the purpose of carrying out the provisions of this act, if such society whose agent or agents are so employed, owns or controls a suitable place for keeping and destroying dogs."

Under the foregoing section, the General Assembly has seen fit to enact two provisos to the general requirement that the county commissioners shall provide all equipment for the taking, housing and destruction of dogs. The first is to the requirement that the commissioners provide a suitable place for impounding and caring for dogs and also humane devices and methods for destroying dogs, to wit, that under the circumstances therein set forth, the commissioners shall be relieved of this obligation and deliver all dogs seized by the dog warden and his deputies to the society having such facilities. There is clearly no authority in this proviso for delegating to any private organization the administration of the dog and kennel license law. The second proviso merely authorizes the designation and appointment of any officer or officers regularly employed by any society therein referred to, to act as dog wardens or deputies, providing such society has a suitable place for keeping and destroying dogs.

It is perfectly manifest that neither under the provisions of Section 5652-8, General Code, nor under the provisions of any other section, are the county commissioners authorized to contract with any private society or organization of any kind for the entire administration of the law relating to the licensing of dogs and kennels.

In view of my conclusion in answer to your second question, it is unnecessary to consider your third question.

In addition to submitting the three numbered questions contained in your communication, you also ask whether or not a finding for recovery may be made in favor of the dog and kennel fund for compensation paid to the chief dog warden in excess of the amount fixed by the board of county commissioners employing such warden when such excess has been paid by a society presumably organized under authority of Sections 10062 to 10067, inclusive, of the General Code. Your communication is not

entirely clear as to whether or not the society in question has been deriving any funds other than those received from the board of county commissioners. Should this society have some other source or sources of revenue from which the excess compensation of which you inquire has been paid, there is no precedent for a finding in favor of the dog and kennel fund based upon such compensation. If, however, this excess compensation has been paid from funds derived from the county, there is little question in my mind but that such expenditure of county funds by the society would be without authority of the board of county commissioners and a finding for recovery should accordingly be made therefor. Upon the facts submitted, it is believed that a more categorical answer to this final inquiry may not be made.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2615.

APPROVAL—CONTRACT, STATE OF OHIO, THROUGH ADJUTANT GENERAL AND DIRECTOR OF STATE ARMORIES, WITH GEO. W. TIMMONS, INC., COLUMBUS, OHIO, CERTAIN DESIGNATED BRANCHES OF WORK, CONSTRUCTION, OHIO STATE ARMORY, IRONTON, OHIO, TOTAL EXPENDITURE, \$29,348.00.

COLUMBUS, OHIO, June 20, 1938.

HON. EMIL F. MARX, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract by and between Geo. W. Timmons, Inc., Columbus, Ohio, and the State of Ohio acting by and through Emil F. Marx, Adjutant General and Director of State Armories, for the construction and completion of an Ohio State Armory to be erected at Ironton, Ohio, including all branches of the work except the three mechanical trades, and including alternate No. 1 glazed brick, which contract calls for the total expenditure of twenty-nine thousand three hundred and forty-eight dollars (\$29,348.00).

You have also submitted the following papers in this connection: Encumbrance record No. 113, dated May 25, 1938, proof of publication, workmen's compensation certificate showing the contractor having complied with the laws of Ohio relating to compensation, Controlling Board release, certificate of the Auditor of State that the necessary papers are