

Lease from E. G. Buchsieb of Columbus, Ohio, for the first floor of the building at 536 Park Street South, Columbus, Ohio, This lease is for a term of ten months, beginning on the first day of March, 1936, and ending on the 31st day of December, 1936, by the terms of which the State will be required to pay \$185.00 per month rental.

You have submitted encumbrance estimates which contain the certificate of the Director of Finance to the effect that funds are available for the payment of rentals for the first two months of the period of each lease.

Finding said leases in proper legal form, I hereby approve them as to form and return them herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5278.

APPROVAL—BONDS OF PAYNE VILLAGE SCHOOL DISTRICT, PAULDING COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, March 21, 1936.

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

5279.

DOG AND KENNEL FUND—LIMITED TO FIFTY PERCENT FOR ADMINISTRATION PURPOSES—MAY NOT CONSIDER UNEXPENDED BALANCE OF PREVIOUS YEAR.

SYLLABUS:

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 expense.

COLUMBUS, OHIO, March 21, 1936.

HON. T. B. WILLIAMS, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

"One of the deputy inspectors of public accounts, who is at present examining the accounts of the various offices of this county, and the county auditor of this county have propounded the following question for consideration and which I will refer to you for an answer.

The question refers to a construction of the following part of section 5652-13 of the General Code, to-wit:

'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 per cent of the *gross receipts* of said dog and kennel fund in any calendar year, and 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 section 5652 and supplemental sections of the General Code.'

The question propounded is:

Do the words 'gross receipts of said dog and kennel fund in any calendar year' mean only the money actually received into that fund during the calendar year or does it include the receipts of the calendar year and also the balance on hand at the beginning of the calendar year?

My contention is that the county commissioners shall appropriate not exceeding 50 per cent (gross receipts) of the *actual money* received from the registration fees during the calendar year, and does not include a balance on hand at the end of the preceding calendar year."

The latter portion of Section 5652-13, General Code, which you quote, limits the first part of the section, which provides that the registration fees provided for the registration of dogs shall constitute a special fund known as the dog and kennel fund, and that such fund shall be used for the purpose of paying the cost of carrying out the provisions of law

relating to the registration of dogs and for the payment of animal claims as provided in Sections 5840 to 5849, both inclusive, General Code, and in accordance with Section 5652, General Code.

This provision that the amount appropriated for cost of administration shall not exceed fifty per cent of the gross receipts in any calendar year is an express limitation on the amount which may be appropriated in any calendar year, and such amount apparently may not exceed fifty per cent of the gross receipts of such year. Attaching the ordinary signification to the language of the Legislature, it would seem to follow that unexpended moneys in the fund carried over from a previous year are not receipts for the year following.

Before adopting this more obvious construction of the portion of Section 5652-13, *supra*, here under consideration, the effect thereof should be considered since it is possible to construe such statute as referring to all moneys which appear in the dog and kennel fund on January 1 and thereafter during any given year, whether such moneys appear therein as a result of license fees having been collected during such year or as a result of moneys being carried over in the fund from the previous year. Such a construction undoubtedly enlarges the meaning of the phrase "gross receipts of said dog and kennel fund in any calendar year", but there is ample authority for extending the meaning of a phrase used by the Legislature where it is necessary so to do in order to give effect to an apparent legislative intent as set forth in other statutes which are in *pari materia*. It is said in 37 O. Jur., pages 545, 546:

"The question as to the meaning of a term used in a statute is not necessarily what that term means in general use, but what it means in the statute in which it is contained. Accordingly, there may be cases in which the terms of a statute are given a meaning other than their ordinary one. Similarly, the natural force of the words used in a statute, taken by themselves, is not always the true test in construing a statute. It is by no means unusual to extend the enacting words of a statute beyond their natural import and effect."

The amount which the county commissioners may appropriate for the cost of administering the purposes of the dog and kennel fund is discretionary, they being under no duty to appropriate the maximum amount provided by Section 5652-13, *supra*. It was held in an opinion of this office appearing in Opinions of the Attorney General for 1927, Vol. III, page 1782:

"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 moneys in the dog and kennel fund not appropriated for cost of administration may be expended to pay claims for live stock injured or destroyed. Opinions of the Attorney General for 1934, Vol. II, pages 1071, 1073. It follows that if less money is appropriated for administration, the amount available for the payment of such claims is augmented. In imposing this limitation as to cost of administration, the General Assembly did not in my judgment contemplate that administration costs may be augmented in any year merely because in the previous year all moneys available therefor were not expended to pay live stock claims filed during such year, resulting in a surplus being carried over in the dog and kennel fund. This is true for the reason that express provision is made for the use of such surplus in the payment of old claims. Section 5846, General Code, after setting forth the detailed method for the payment of claims that have been allowed, provides:

"If 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 are sufficient funds available in said dog and kennel fund."

This last mentioned section was under consideration in an opinion of this office appearing in Opinions of the Attorney General for 1927, Vol. IV, page 2457, the first branch of the syllabus being as follows:

"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."

An additional effect of the extension of the language of Section 5652-13, supra, here under consideration, should be commented upon. If the fifty per cent limitation as to the amount which may be appropriated for administration expense may be augmented by considering balances carried forward in the dog and kennel fund as gross receipts of that fund for the calendar year, the amount available for the payment of live stock claims may well be depleted to such an extent as to authorize the county commissioners to invoke the provisions of Section 5652-7a, General Code, increasing the dog and kennel license fees for the ensuing year. I am unable to say that the Legislature intended to authorize an increase in the dog and kennel license fees based upon an increase in the cost of administration but only authorized an increase in such fees where payment of claims for live stock killed by dogs makes such increase necessary. This last mentioned section of the General Code has been strictly construed by this office. I refer to an opinion appearing in Opinions of the Attorney General for 1927, Vol. IV, page 2462, the syllabus of which is as follows:

“1. 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.

2. 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.”

It is my opinion that 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 expense.

Respectfully,

JOHN W. BRICKER,
Attorney General.