

I am herewith returning to you with my approval the abstract of title, warranty deed, encumbrance record No. 11, Controlling Board certificate, and likewise a copy of the option that was taken by your Department on this land.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

3691.

DOG TRAP—COUNTY COMMISSIONERS UNAUTHORIZED TO PURCHASE AND PAY FOR SAME FROM GENERAL FUND OF COUNTY.

*SYLLABUS:*

*Section 5652-8 of the General Code does not authorize county commissioners to purchase dog traps and pay for the same out of the General Fund of the County.*

COLUMBUS, OHIO, December 24, 1934.

HON. T. DONALD SHORT, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“A farmer of this county has invented a dog trap and he wishes to sell some of them to the county. The Dog and Kennel Fund is depleted and if any traps are purchased it would be necessary to pay for them out of the general fund.

Is there any authority for the county commissioners to purchase dog traps and pay for them out of the general fund?”

Section 5652-8, General Code, reads in part as follows:

“County commissioners shall provide nets and other suitable devices for the taking of dogs in a humane manner, and except as hereinafter provided, also provide a suitable place for impounding dogs, and making proper provision for feeding and caring for the same, and shall also provide humane devices and methods for destroying dogs. \* \* \*”

Sections 5652-12 and 5652-13, General Code, provide for the establishment of a fund, for the purpose of paying all necessary expenses of administering the sections of the General Code (sections 5652, et seq.), relating to the registration, licensing, seizing, impounding and destroying of dogs, and paying compensation for injuries to live stock inflicted by dogs. Said sections read:

Section 5652-12.

“All funds received by the dog warden or pound keeper in connection with the administration of this act shall be deposited in the county treasury and placed to the credit of the dog and kennel fund.”

Section 5652-13.

"The registration fees provided for in this act shall constitute a special fund known as the dog and kennel fund which shall be deposited by the county auditor in the county treasury daily as collected and be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets and other equipment, also paying the compensation of county dog wardens, deputies, pound keeper and other employees necessary to carry out and enforce the provisions of the law relating to the registration of dogs, and for the payment of annual claims as provided in G. C. §§5840 to 5849, both inclusive, and in accordance with the provisions of G. C. §5653. Provided, however, that the county commissioners by resolution shall appropriate sufficient funds out of the dog and kennel fund such 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. §5652 and, supplemental sections."

County commissioners are the principal executive officers of the county. As such they have the management and control of the county's property, its financial interests and its police regulations. At the same time, their authority is strictly limited to that expressly or impliedly conferred upon them by statute and they can act for and bind the county only within the limits of such authority. Moreover, in the exercise of their powers, county commissioners must follow the terms of the law and proceed in the manner prescribed thereby. *State, ex rel. Compton vs. Butler County*, 18 O. App. 462; *State, ex rel. Office Specialty Manufacturing Company vs. Betts*, 4 O. C. C. 86. When acting under a special power, they must act strictly on the conditions under which it is given. *Hamilton County vs. Mighels*, 7 O. S. 109; *State, ex rel. Treadwell vs. Hancock County*, 11 O. S. 183; *Jones vs. Lucas County*, 57 O. S. 189.

The rule is clearly stated in the case of *State, ex rel. Locher vs. Menning, et al.*, 95 O. S., page 97, wherein it is declared:

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

While the provisions of Section 5652-8, supra, enjoin upon the county commissioners the duty of providing nets and other suitable devices for the taking of dogs, nevertheless by the terms of Section 5652-13, supra, the several administrative charges provided in carrying the law into effect, must be appropriated out of the Dog and Kennel Fund and the amount of such appropriation may not exceed 50% of the gross receipts of such fund in any calendar year. This office has heretofore taken the definite position that this last mentioned section expressly limits the power of the county commissioners in the amount which they may appropriate for the purpose, among other things, of defraying the expense of seizing

dogs. This was the position taken in an opinion of this office appearing in Opinions of the Attorney General for 1927, Volume 3, Page 2157, the syllabus of which is as follows:

“A board of county commissioners has authority to provide by appropriation from the dog and kennel fund collected prior to August 10, 1927, the effective date of H. B. No. 164, (112 O. L. 347) for the purpose of compensating a county dog warden or deputies. The amount of money which such board may lawfully appropriate for such purpose 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, not more than three-tenths of which amount so appropriated may be expended by the county auditor for registration tags, blanks, records and clerk hire.”

While you do not specifically inquire as to whether or not the suggested purpose may be accomplished by augmenting the Dog and Kennel Fund by transferring moneys from the general fund to such Dog and Kennel Fund, under the broad provisions of Sections 5623-13a, et seq. of the General Code as enacted by the 90th General Assembly, 115 O. L. 251, it may be well to comment upon this phase of the question. The broad provisions now in effect with respect to transferring moneys from one fund to another are general in their nature and although later as to time of enactment than Section 5652-13 which was enacted in its present form in 1927, nevertheless Section 5652-13, General Code, is a special section and it is, of course, a general rule of statutory construction that special enactments of this nature are not set aside by general provisions which otherwise might include the subject matter of the special enactment. I do not believe, therefore, that it may be validly contended that the express limitation contained in Section 5652-13 as to the amount which the county commissioners may appropriate for the specific purposes therein set forth, may be circumvented by invoking the broad provisions of Sections 5625-13a, et seq., and augmenting thereby the Dog and Kennel Fund.

It would therefore appear that if the Dog and Kennel Fund of a county is depleted, or if in any calendar year there has already been appropriated from such fund 50% of the gross receipts thereof for the necessary expenses of registering, seizing, impounding and destroying dogs, the county commissioners are without authority to appropriate money from the general fund for any such administrative costs.

In view of the foregoing and specifically answering your question, I am of the opinion that county commissioners may not lawfully purchase dog traps and pay for the same out of the general fund of the county.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*