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COUNTY COMMISSIONERS — WITHOUT AUTHORITY TO ALLOW CLAIM FOR LOSS OR INJURY TO ANIMALS OR POULTRY UNLESS DUPLICATE STATEMENT IS FILED WITHIN SIXTY DAYS FROM DISCOVERY OF INJURY—SECTION 5840 G. C.

SYLLABUS:

County Commissioners are without authority to allow a claim for loss or injury to animals or poultry unless a duplicate statement of such loss or injury is filed with them within sixty days thereof, as required by Section 5840, General Code.

Columbus, Ohio, February 7, 1947

Hon. Frank W. Springer, Prosecuting Attorney, Columbiana County  
Lisbon, Ohio

Dear Sir :

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

“A question has been presented to this office upon which we respectfully request your opinion.

Section 5840, General Code, provides for the procedure necessary to perfect a claim for the killing or injuring of animals by dogs. It is provided that the owner of such animals may present to the Township Trustees of the township in which such loss or injury occurred within 60 days a detailed statement of such loss or injury, supported by his affidavit that it is a true account of such loss or injury. A duplicate of such statement shall be presented to the County Commissioners of the county in which such loss or injury occurred. It is further provided that if such statements are not filed within 60 days after the discovery of such loss or injury no compensation shall be paid therefor.

In the instant case the claimant presented a detailed statement of his loss to the Township Trustees of the township in which such loss occurred within the 60 day period. However, the duplicate of such statement was not presented to the County Commissioners until sometime after the 60 day period had expired, in fact the transcript of the findings of the Township Trustees and the duplicate copy of the claimants statement were transmitted to the county commissioners at the same time.

Is the presenting of a duplicate of the claimants statement to the County Commissioners within 60 days a condition precedent to the final consideration of the claim by the County Commissioners?”

Section 5840, General Code, provides :

“Any owner of horses, sheep, cattle, swine, mules, goats and domestic fowls or poultry having an aggregate value of ten dollars or more which have been injured or killed by a dog not belonging to him or harbored on his premises, in order to be entitled to enter a claim for damages must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered, and such commissioner shall immediately notify the dog warden or other enforcing officer of such loss or injury, whose duty it shall be to have the

facts of such loss or injury investigated at once. The owner of such horses, sheep, cattle, swine, mules, goats, or domestic fowls or poultry having a value of ten dollars or more, may present to the township trustees of the township in which such loss or injury occurred, within sixty days a detailed statement of such loss or injury done, supported by his affidavit that it is a true account of such loss or injury. A duplicate of such statement shall be presented to the county commissioners of the county in which such loss or injury occurred. If such statements are not filed within sixty days after the discovery of such loss and injury no compensation shall be made therefor. Such statement shall set forth the kind, grade, quality, and value of the horses, sheep, cattle, swine, mules, goats and domestic fowls or poultry having a value of ten dollars or more so killed or injured, and the nature and amount of the loss or injury complained of, the place where such loss or injury occurred, and all other facts in the possession of the claimant which would enable the dog warden to fix the responsibility for such loss or injury. Statements of the nature and amount of the loss or injury complained of shall be supported by the testimony of at least two freeholders who viewed the results of the killing or injury and who can testify thereto."

You will note that the foregoing section requires any owner of the kinds of livestock or poultry enumerated therein, who has suffered a loss by reason of such livestock having been injured or killed by a dog not belonging to him or harbored on his premises, if he seeks compensation for such loss, to do three things in connection with a claim for damages, i. e.,

1. He must notify a County Commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered;
2. He must present to the Township Trustees of the township in which such loss or injury occurred, within sixty days after the discovery of such loss or injury, a detailed statement supported by affidavit, of such loss or injury.
3. He must present a duplicate of such statement, within sixty days of such loss or injury, to the County Commissioners of the county in which such loss or injury occurred.

It is well settled that the powers of public officers are limited, and while some exercise powers which are defined in the fundamental law, the larger portion of the powers of public officers are of statutory creation with duties and limitations therein prescribed. The general rule appears to be that public officers have only such powers as are expressly

delegated them by statute, and such as are necessarily implied from those so delegated. This principle is especially applicable with reference to the financial affairs of a county, and the powers and duties of County Commissioners with respect thereto. Public monies whether in the custody of public officers or otherwise, constitutes a public trust fund which can only be dispensed by clear authority of law. See generally 32 O. Jur., Sec. 74, page 933.

A great many cases involve the construction to be placed upon time provisions in a statute. There are two rules enunciated in the cases; one with respect to the construction to be placed on time limitations as applied to the acts of public officers, and another rule relative to the construction to be placed on a statutory time limitation of an act to be performed by an individual. In the former case the general rule appears to be that statutory provisions regulating the duties of such officers and specifying the time for their performance shall be regarded as directory only, since individuals or the public should not be made to suffer for the dereliction of public officers. However, as stated in Sutherland Statutory Construction, Vol. 3, 3rd Edition (Horack) page 107:

“As a general proposition, the rule with respect to statutory directions to individuals is the opposite of that which obtains with respect to public officers. When a statute directs things to be done by a private person within a specified time, and makes his rights dependent on proper performance thereof, unless the failure to perform in time may injure the public or individuals, the statute is mandatory. Where an individual is the person not strictly complying he has no grounds for complaint.”

The foregoing statement with the authorities in support thereof was based on statutes which prescribed a time limitation only, and which statutes made no specific provision as to the result where such acts were not performed within the time limited. In the instant case it will be noted that Section 5640, General Code, specifically provides:

“If such statements are not filed within sixty days after the discovery of such loss and injury no compensation shall be made therefor.”

This language is certainly clear and unequivocal and permits of only one interpretation. When the Legislature decided to grant the right of compensation and in the same section to state the result that would follow noncompliance with its express terms it had the right to do so, and such

a provision must be construed as mandatory. It is generally recognized that statutes are mandatory, if in addition to requiring the doing of specified things, they prescribe the result that will follow if they are not done. And where the statute prescribes in terms that a recovery cannot be had if the statutory requirements are not complied with, such statutory provision is obviously mandatory. Sutherland Statutory Construction, Vol. 3, 3rd Edition (Horack) page 109; Taylor v. Bleakley, 55 Kan. 1; 39 Pac. 1045; Damson v. Hetyler, 230 Mo. App. 737, 74 S. W. 2nd 488; People v. City of Los Angeles, 9 Cal. App. 2nd 431, 50 P. 2nd 101.

In Opinions of the Attorney General for 1940, Vol. 2, page 1028, the then Attorney General had under consideration this same section, with respect to the 48 hour notice required, and the syllabus of that opinion, 3079, provides:

“Under the provisions of Section 5840, General Code, the owner of horses, etc., which have been killed or injured by dogs must give notice to a County Commissioner within forty-eight hours after the discovery of the loss or injury regardless of the time of the discovery of the cause of the loss or injury, if such owner is to be entitled to compensation for such damage.”

In the same opinion the Attorney General quotes with approval from the case of Franklin County v. Jackson, et al., 178 Ark. 689, as follows:

“ ‘Appellee’s right to compensation for the damage done by the dog of an unknown owner is of statutory creation, and the statute which creates the right prescribes the time and manner within which one must proceed to obtain its benefits. It is a general rule that, where a cause of action does not exist at common law, but is created by statute, the right conferred by the statute must be enforced within the time and in the manner and form prescribed by the statute which created it. \* \* \*

The 48 hours given the owner after he is apprised of the killing or injury of his stock to notify the justice of the peace is in the nature of a statute of limitations and while it does appear to be unusually short, this was a question which was addressed to and was decided by the legislature. We might surmise why the time was made so short, but we are neither required nor permitted to do so, as the legislature, in creating the cause of action, had the right and power to prescribe the time and manner within which it should be enforced. This it did, and, as appellees failed to comply with this situation in the creation of their cause of action, they have no cause of action under the statute.’ ”

It will be noted that the Attorney General came to the conclusion that the forty-eight hour requirement was a condition precedent to recovery and he reached such conclusion in spite of the fact that the statute contains no expression of the result that will follow noncompliance with that time limitation, such as is found with respect to failure to file the sixty day notices.

To the same effect is Opinion 1930 of Opinions of the Attorney General for 1928, the syllabus of which provides:

“By the terms of Section 5840, General Code, in order to entitle any owner of horses, sheep, cattle, swine, mules and goats, which have been injured or killed by a dog not belonging to such owner, or harbored on his premises, to enter a claim for damages, such owner must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.

A board of county commissioners is without authority to allow a claim for damages, presented under the provisions of Section 5840, General Code unless the claimant notifies a county commissioner in person or by registered mail within forty-eight hours after the loss or injury has been discovered.”

In the case of *Eddy v. Honey Creek Township of White County*, 63 Ind. App. 527, which deals with a limitation of ten days within which to file a claim similar to the one in question here, the court held that the claim must be filed within the time prescribed, and stated at page 531:

“\* \* \* It was evidently the intention of the legislature to fix a definite time in which such owner should report to the township trustee, in order to receive compensation, so that the matter might be brought to his notice while the facts were fresh, in order that he might investigate and protect the fund in his hands from wrongful and excessive claims. \* \* \*”

Therefore, in view of the foregoing and in specific answer to your question, it is my opinion that County Commissioners are without authority to allow a claim for loss or injury to animals or poultry unless a duplicate statement of such loss or injury is filed with them within sixty days thereof, as required by Section 5840, General Code.

Respectfully,

HUGH S. JENKINS,  
Attorney General.