

and I feel that the one here under consideration is in all respects reasonable and does not impose any unnecessary burden upon interstate commerce.

Your further question in the supplemental letter is whether an Ohio refiner may sell and deliver gasoline by pipe line to an Ohio dealer without paying the tax thereon. Their claim for authority to deliver the gasoline without the payment of the tax is based upon Section 5526-4 of the General Code, enacted in House Bill 177 of the 87th General Assembly, which is as follows:

"In the event any person, firm, association, partnership, or corporation producing, refining, preparing, distilling, manufacturing or compounding motor vehicle fuel in Ohio, shall sell such motor vehicle fuel in tank car lots to any purchaser who is duly registered as a dealer under the provisions of Section 5528, General Code, then such purchaser and not the seller shall be deemed the 'dealer' as to the motor vehicle fuel contained in such tank car lots."

The exemption therein authorized is only in favor of one selling motor vehicle fuel *in tank car lots*. In the instance you cite, delivery by pipe line apparently normally exceeds the volume of a tank car lot, and it is insisted that this authorizes the application of the exemption to such delivery.

This section, constituting as it does an exception to the otherwise general application of a tax law, must be strictly construed. I do not feel warranted in extending the language to delivery other than in tank car lots. Especially is this true in view of the provisions of Section 5529-3 of the Code, hereinbefore quoted. You will observe that this section requires every common carrier transporting motor vehicle fuel, either in interstate or *intrastate* commerce to a point within Ohio, to make the report therein provided to the Tax Commission. The filing of such reports will obviously provide the commission a method of checking deliveries by tank car from refiners to customers in Ohio, and so facilitate the collection of the tax from the customer. No such additional check, however, exists in case of deliveries by pipe line, and I therefore do not feel warranted in extending the exemption provided for by Section 5526-4 of the General Code beyond its express terms.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1017.

DOG WARDEN'S SALARY—HOW DOG AND KENNEL FUND MAY BE APPROPRIATED.

SYLLABUS:

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 percent 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 provision:

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.

COLUMBUS, OHIO, September 19, 1927.

HON. JOHN W. DUGAN, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

“Section 5652-13, General Code, provides in part as follows:

‘The registration fees provided for in this act shall include 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 costs of furnishing all blanks, records, tags, nets and other equipment, also paying compensation of county dog warden, deputies, pound keeper and other employees necessary to carry out and enforce the provisions of the laws relating to the registration of dogs and for payment of animal claims, etc.’

The amount in our Dog and Kennel Fund, at the present time, is not sufficient to care for outstanding claims. Regardless of these claims, shall the dog warden’s salary be paid first out of the money that is now, and that may hereafter be placed in said Dog and Kennel Fund? It would seem to me that the expense of administration, which of course includes salary of dog warden, should be paid first.”

The 87th General Assembly, on April 21, 1927, passed an act entitled:

“An act—To amend Sections 5652, 5652-1, 5652-7, 5652-8, 5652-9, 5652-10, 5652-11, 5652-12, 5652-13, 5652-14, 5652-15, 5653, 5840, 5848, 5851, and 5852 and to enact supplemental Sections 5652-7a, 5652-7b, 5652-7c, 5652-14a, 5652-14b and 5652-16 of the General Code, relative to the licensing and regulation of dogs and providing for the payment of damages to live stock caused by dogs.”

which became effective on August 10, 1927 (112 v. 347). Section 5652-13, General Code, as amended by said act and to which you refer, is determinative of the question which you present. This section reads:

“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 laws relating to the registration of dogs, 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. 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 Section 5652 and, supplemental sections of the General Code."

As provided in Section 5652-13, supra, the registration fees provided for in such act shall constitute a special fund known as the "Dog and Kennel Fund." Such fund shall 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 employes necessary to carry out and enforce the provisions of the laws relating to the registration of dogs and for the payment of animal claims.

In order to give effect to and ascertain what the intention of the legislature was when it enacted this section and particularly the last sentence thereof it is necessary to resort to the rule of statutory construction which, as stated in 36 Cyc. 1126, is as follows:

"Mere verbal inaccuracies, or clerical errors in statutes in the use of words or number, or in grammar, spelling or punctuation, will be corrected by the court, whenever necessary to carry out the intention of the legislature as gathered from the entire act."

It appears from the context of the last sentence of Section 5652-13, supra, that certain punctuation was omitted and it is my opinion that such section should be read as though the words "not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire" were placed in parenthesis or other like punctuation marks used. That is, this section should be construed as though it read:

" * * * the county commissioners by resolution shall appropriate sufficient funds out of the Dog and Kennel Fund, said fund so appropriated not to exceed fifty per cent 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. * * * "

As thus punctuated the meaning of the sentence becomes clear, that is, for the purpose of defraying the necessary expense of registering, seizing, impounding and destroying dogs in accordance with the provisions of Section 5652 and supplemental sections of the General Code, the county commissioners by resolution shall appropriate out of the Dog and Kennel Fund sufficient moneys, not exceeding fifty per cent of the gross receipts of the Dog and Kennel Fund in any calendar year, not more than three-tenths of which, namely, the amount so appropriated shall be expended by the county auditor for registration tags, blanks, records and clerk hire.

As provided in Section 5652-7, General Code,

"County commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation,

as such county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs and the payment of compensation for damages to live stock inflicted by dogs.

The amount of money which may be appropriated out of the Dog and Kennel Fund for the compensation of such county dog warden and deputies is within the discretion of the board of county commissioners but by the terms of Section 5652-13, supra, may not exceed fifty percent of the gross receipts of such fund in any calendar year, less such amount not to exceed three-tenths thereof which may be expended by the county auditor for registration tags, blanks, records and clerk hire.

If in any year there should not be sufficient money in the Dog and Kennel Fund after paying the expenses of administration your attention is directed to the method of increasing such fund provided by Section 5652-7a, General Code, which reads :

"If in any year there should not be 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, the county commissioners between December 1st and December 15th shall ascertain the number of claims entered and the amount of money allowed for live stock injured and destroyed, and, also the total expense incurred by the administration of the dog law, such commissioners shall also ascertain the amount received for Dog and Kennel licenses. The license fees for the ensuing year shall then be fixed at such an amount that when multiplied by the number of licenses issued during the previous year the product will equal the aggregate of the claims for injured and destroyed live stock allowed by said county commissioners, plus the expense of administration. The increase in said license fee shall always be in the ratio of one dollar for male or spayed female dogs, three dollars for unspayed female dogs and ten dollars for a dog kennel license."

In view of the foregoing and answering your question specifically, I am of the opinion that 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 and good judgment 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 including such salaries. Three-tenths of any 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 is to 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.

Respectfully,
EDWARD C. TURNER,
Attorney General.