

is within a city or outside thereof is unimportant for the reason that there exists power to abate it in either instance.

In connection with your inquiry, it may be noted that the legislature has seen fit to make specific provision for the disposition of the bodies of animals which have died from contagious diseases but such statutes would not have application to your general question.

While the Director of Highways has power to maintain state highways and power to cause "obstructions" to be removed, such powers relate to the public convenience and safety as contradistinguished from health matters, and it is not believed there is any power whereby a board of health could issue an order to him to abate such a nuisance.

In answer to the specific question propounded, it is my opinion that a local board of health may take action to abate the nuisance of a dead animal on a state highway but it has no power to order another official to take action except of course a health officer or other employe under its jurisdiction.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4553.

NATIONAL GUARD—STATE EMPLOYE—ENTITLED TO LEAVE OF
ABSENCE DURING TRAINING PERIOD NOT TO EXCEED FIFTEEN
DAYS—ENTITLED TO SALARY DURING SUCH ABSENCE.

SYLLABUS:

Where a state employe regularly employed by the state is a member of the National Guard, he is entitled to leave of absence from his duties during the time he is in attendance at the field training for a period not to exceed fifteen days and he is entitled to his regular salary or compensation without deduction for such absence.

COLUMBUS, OHIO, August 8, 1932.

HON. F. D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for an opinion which reads as follows:

"Numerous inquiries have been made of this office relative to the effect of Section 5273-2, Ohio Laws, as applied to state employes who are members of the National Guard in attending field training for a period of fifteen days. Most of the inquiries are in connection with state employes who are laborers of State and County Highway Departments.

It is requested that this office be furnished with an opinion relative to the operation of the above mentioned section of Ohio Laws."

Section 5273-2, General Code, referred to in your request, reads as follows:

"All officers and employes of the state, the several counties, cities and city school districts thereof, who are members of the Ohio national guard, naval militia, or officers reserve corps, shall be entitled to leave of absence from their respective duties, without loss of pay or time, for such time as they are in military service on training duty under the

orders of the governor of the state of Ohio as the commander in chief, in case of the national guard and the naval militia, or competent authority in case of the officers' reserve corps, for periods not to exceed 15 days in any one calendar year."

The above quoted section is modeled after the federal statute on the same subject. Section 75, title 32, chapter 4, U. S. C. L., reads as follows:

"All officers and employees of the United States and of the District of Columbia who shall be members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this title."

It is a general rule of construction that where a statute is borrowed from another state and enacted into a law by the legislature the courts will presume that the legislative intent was to copy the statute with the interpretation which had been placed thereon by the courts of the state from which such statute was borrowed. See *Casualty Company vs. Nadler*, 115 O. S. 472. The federal government in construing the section above quoted holds that all employes of the federal government who are employed by the month or year are entitled to leave of absence with pay while called out on military duty. See 2 Comptroller-Gen. Dec., page 54; 2 Comptroller-Gen. Dec., page 30; Dig. Op.-Judge Adv. Gen. (1922), page 6. The federal officials have also ruled that where the employe is employed for a period at a per diem compensation merely as a measure of pay he is entitled to the benefits of such act. See 2 Comptroller-Gen. Dec. page 247. However, in such decision it is held that where one is employed merely from day to day by the federal government he is not entitled to the benefits of such act.

Like reasoning applied to the Ohio act would lead to the conclusion that any person who is in the regular employ of the State of Ohio, whether his compensation is by the year, month or day, is entitled to the leave of absence provided for in section 5273-2, General Code, without deduction from his regular salary or compensation by reason of such leave of absence. But when a person is not in the regular employ of the State of Ohio but is a mere incidental or occasional employe, he is not entitled to the benefits of such section.

Specifically answering your inquiry, I am of the opinion that where a state employe regularly employed by the state is a member of the National Guard, he is entitled to leave of absence from his duties during the time he is in attendance at the field training for a period not to exceed fifteen days and that he is entitled to his regular salary or compensation without deduction for such absence.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4554.

APPROVAL, NOTES OF YOUNGSTOWN CITY SCHOOL DISTRICT,
MAHONING COUNTY, OHIO—\$330,000.00.

COLUMBUS, OHIO, AUGUST 8, 1932.

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