

1043.

RABIES—PERSONS BITTEN BY ANIMALS AFFLICTED WITH RABIES
MAY BE REIMBURSED FOR EXPENDITURES FROM GENERAL FUND
OF COUNTY WHERE INJURY OCCURRED TO EXTENT OF \$200.00.

SYLLABUS:

Persons bitten or injured by dogs, cats or other animals afflicted with rabies, may be reimbursed for expenditures incurred on account thereof, to the extent of \$200.00, from the general fund of the county wherein the injury was incurred.

COLUMBUS, OHIO, September 22, 1927.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

“Section 5852 of the General Code formerly provided that the county commissioners of a county might pay out of the general fund of the county certain medical, surgical or other expenditure resulting from rabies. This section was amended by the recent legislature in House Bill No. 164.

Query: Is the payment as provided for in Section 5852 of the General Code as it now exists, to be made from the general fund of the county or from the dog and kennel fund?”

By the terms of Sections 5851 and 5852, General Code, persons who have been bitten or injured by a dog, cat or other animal afflicted with rabies may be reimbursed for any expenditure made necessary on account of such injury to the extent of two hundred dollars.

The duty of the county commissioners with reference thereto after an account for such expenditure has been presented is set out in Section 5852, General Code, which before amendment by the 87th General Assembly read as follows:

“The county commissioners not later than the third regular meeting, after it is so presented, shall examine such account, and, if found in whole or part correct and just, may order the payment thereof in whole or in part, out of the general fund of the county; but a person shall not receive for one injury a sum exceeding five hundred dollars.”

As amended by the 87th General Assembly in House Bill No. 164, this section reads as follows:

“The county commissioners not later than the third regular meeting, after it is so presented, shall examine such account, and if found in whole or part correct and just, shall order the payment thereof in whole or in part to the patient and to the physician who rendered such treatment, in accordance with their respective claims, but a person shall not receive for one injury a sum exceeding two hundred dollars.”

It will be observed that the changes made by the amendment are to the effect that the amount to be paid to any person for one injury is limited to \$200 instead of \$500, the money paid for the services of a physician must be paid direct to the physician, instead of the person who employed him, and the further change that as

amended, the statute does not state from what fund payment is to be made, whereas the former statute provided that payment should be made from the general fund. In addition, the statute before amendment provided that the county commissioners "may order the payment * * * in whole or in part" while the section now provides that the commissioners "shall" order such payment.

If Section 5852, *supra*, stood alone and had been originally enacted in its present form no question would arise as to from what fund payments authorized thereby should be made. When public expenditures are authorized and no direction made as to what specific fund is to bear the expenditure it is implied that the expenditure is to be made from the general fund as special funds can bear only such expenditures as are specifically charged to them.

The fact however that the statute was enacted as a part of an act of the General Assembly entitled "An Act—To amend Sections 5652 * * * and to enact supplemental Sections 5652-7a * * * 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", by the terms of which act a special fund is created from the revenues derived from the collection of fees and penalties for the registration of dogs known as the dog and kennel fund, and the further fact that in amending Section 5852, *supra*, the provision that payments thereunder should be made from the general fund was omitted has caused the question to be raised as to from what fund obligations hereinafter incurred, under the provisions of Sections 5851 and 5852, *supra*, are to be paid.

As a part of this same act to which I have referred, there was enacted amended Section 5652-13, General Code, which sets forth the uses and purposes of the dog and kennel fund as follows:

"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."

The dog and kennel fund being a special fund, its use in my opinion is confined to the specific uses set out in the statute. No construction can be placed on the language of this statute which would authorize the payment of expenses incurred by reason of *injuries to persons* caused by dogs, cats or other animals afflicted with rabies, as distinguished from injuries to live stock caused by a dog, whether or not afflicted with rabies, for which provisions are made in Sections 5840 to 5850, inclusive, of the General Code. It follows that if such expenditures can not be made from the dog and kennel fund the fact that the statute is silent as to from what fund the

expenditures are to be paid, signifies that payments authorized thereby should be made from the general fund else they can not be made at all.

This conclusion is fortified by the fact that there could be no good reason assigned for providing that the dog and kennel fund should bear the expense incurred by reason of injuries caused by dogs, cats or other animals, afflicted with rabies. True, the dog and kennel fund is made up of moneys arising from fees for dog registration, but it does not have the advantage of any fees arising on account of the regulation or registration of cats and other animals and to burden such fund with the expenses incident to injuries caused by cats and other animals would not seem to be just.

It is my opinion therefore, that expenditures authorized by Sections 5851 and 5852, General Code, should be made from the general fund of the county.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1044.

APPROVAL, BONDS OF FRANKLIN TOWNSHIP RURAL SCHOOL DISTRICT, COSHOCTON COUNTY, OHIO—\$2,500.00.

COLUMBUS, OHIO, September 22, 1927.

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

1045.

APPROVAL, BONDS OF ALLEN COUNTY, OHIO, \$91,200.00.

COLUMBUS, OHIO, September 22, 1927.

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

1046.

ASPIRIN—WHO MAY SELL—WHETHER OR NOT HOUSEHOLD REMEDY, IS QUESTION OF FACT.

SYLLABUS:

1. *The sale or dispensing of aspirin by one who is not a legally registered pharmacist or a legally registered assistant pharmacist employed in a pharmacy or drug store under the management or control of a legally registered pharmacist, constitutes a*