

that the same has been properly executed and that there is shown thereby a sufficient balance in the appropriation account set up under Amended Senate Bill No. 460 to pay the purchase price of this property, which purchase price is the sum of \$16,972.75. I am herewith returning for your further consideration said abstract of title, warranty deed and contract encumbrance record.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2795.

COUNTY COMMISSIONERS—HAVE AUTHORITY TO ALLOW CLAIM FOR DAMAGES TO OWNER OF SHEEP INJURED OR KILLED BY DOGS—NOTICE OF INJURY OR LOSS MUST BE GIVEN WITHIN FORTY-EIGHT HOURS AFTER DISCOVERED.

SYLLABUS:

It is within the authority given in Section 5840, et seq. of the General Code, for county commissioners to allow a claim for damages to an owner of sheep injured or killed by dogs if notice of the injury or loss is given within forty-eight hours after being discovered.

COLUMBUS, OHIO, August 3, 1938.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication wherein you request my opinion on the following:

“‘A’ was the owner of a flock of sheep which was attacked by dogs and within forty-eight hours the County Commissioners were notified and an appraisal made. After the lapse of the forty-eight hours and before the elapse of sixty days, additional injuries were discovered in said flock, caused by said dogs, which injuries were not apparent at the time the appraisal was made.

Can the County Commissioners, under Section 5840, et seq., pay for the additional injuries which were not discovered within the forty-eight hour period?”

Section 5840 of the General Code provides as follows:

“Any owner of horses, sheep, cattle, swine, mules and goats 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 or goats, 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 and goats 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.”

By the plain and unambiguous language used in Section 5840, supra, it is quite apparent that it was the legislative intent that an owner of horses, sheep, cattle, swine, mules or goats injured or killed by a dog not belonging to him or harbored on his premises must, in order to be entitled to enter a claim for damages, notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury is discovered.

Situations such as the one described in your inquiry are not unusual. In many instances the physical condition of sheep is greatly impaired by reason of being attacked by dogs, although immediately after such attack no apparent injury is discernible. Especially is this true in those cases where sheep have come in contact with dogs infected with rabies or with other sheep in a flock which have been bitten by dogs having this disease. In most instances the sheep show no signs of physical

injury until long after the attack although a definite injury is sustained which is directly attributed to that cause. In other cases sheep are run or worried by dogs and although no physical injury is discerned immediately after the attack, the sheep nevertheless eventually show signs of a physical impairment which oftentimes results in permanent physical injury or death. Under such circumstances, it would be strange justice to say that the owner of such sheep would not be entitled to enter a claim for damages if notice of such injury was given a county commissioner within forty-eight hours after being discovered.

Although notice to a county commissioner of sheep killed or injured is one of the conditions precedent which must be complied with by an owner of live stock enumerated in Section 5840, supra, in order to entitle him to enter a claim for damages for loss or injury caused by a dog, nevertheless it is quite apparent from a consideration of this section that such notice need not be given within forty-eight hours after the attack but within forty-eight hours after the loss or injury is discovered.

It is, therefore, my opinion in specific answer to your question, that it is within the authority given in Section 5840, et seq. of the General Code, for county commissioners to allow a claim for damages to an owner of sheep injured or killed by dogs if notice of the injury or loss is given within forty-eight hours after being discovered.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2796.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$15,000.00.

COLUMBUS, OHIO, August 3, 1938.

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

RE: Bonds of City of Cleveland, Cuyahoga County,
Ohio, \$15,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated June 1, 1920. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of September 11, 1934, being Opinion No. 3189.