

In a civil suit before a Common Pleas Court, it might be necessary to take a deposition where the witness lived beyond the adjoining county and the legislature seems to have recognized this principle in authorizing the taking of depositions in a hearing before a state or municipal civil service commission. From an examination of the civil service laws as a whole, it would appear that the same principles in subpoenaing witnesses in a civil suit before a Common Pleas Court would be applicable to a municipal civil service commission.

Without further extending this discussion, it is my opinion in specific answer to your question that a municipal civil service commission may subpoena witnesses living in the county where the trial is conducted or in an adjoining county to the one where the trial is conducted. A witness who lives beyond those limits and who voluntarily appears in the county where the trial is to be held and is there served with a subpoena is entitled to be paid his witness fee but not his mileage.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2938.

COUNTY COMMISSIONERS—AUTHORIZED TO COMPENSATE DOG
WARDEN FOR GASOLINE AND OIL USED BY HIM IN DRIVING
HIS CAR ON OFFICIAL BUSINESS WHEN.

SYLLABUS:

County Commissioners are authorized to enter into a contract with a dog warden and agree to compensate him for gasoline and oil used by such dog warden in driving his car on official business and pay for the same out of the dog and kennel fund, pursuant to the provisions of Section 5652-13 G. C.

COLUMBUS, OHIO, July 19, 1934.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads in part as follows:

“I am writing you for your opinion in the following matter: Under the sections of law relative to the appointment of a County Dog Warden, the County Commissioners appointed the Dog Warden for Putnam County after he had been certified by the Civil Service Commission for this position. He is working under contract at a monthly salary. However, it is necessary for this man, in order to cut the animal claims to the minimum, to drive throughout the county during the night season.

The County Commissioners desire to know whether or not the Dog Warden can be allowed gasoline and oil for his automobile for this additional night driving, same to be paid out of the Dog and Kennel fund. Sections 5652-7, 5652-7a, 5652-13, 5653 and 5846 of the General Code provide the manner and method of the expenditures of moneys out of the Dog and Kennel fund for this position. If it is provided in the

contract with the Dog Warden that the expenses, such as gasoline and oil for the additional night driving which said Dog Warden is required to do, be paid out of the Dog and Kennel fund, would such an expenditure be proper?

In reply to my request for further information relative to the terms of the contract, I received the following communication:

"I have before me the original contract made and entered into by and between the County Commissioners of Putnam County and the Dog Warden, the latter clause of which provides as follows: "It is further agreed by and between the parties hereto that the party of the first part (County Commissioners) is to furnish all necessary supplies, except fire-arms, and the party of the second part is to furnish a dog pound and the equipment therefor."

Section 5652-7, General Code, reads in part as follows:

"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."

Section 5652-13, General Code, reads 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."

Section 5652-13, General Code, is not altogether clear. However, the proviso in this section would indicate that 50% of such registration fees might be expended for the administration of the law and of this 50%, three-tenths may be

expended by the County Auditor for his duties in administering the law. The other 50% may be expended for claims for livestock injured or destroyed. Support for this conclusion may be found in an opinion appearing in the Opinions of the Attorney General for 1927, Volume 3, Page 1782. The syllabus of that opinion reads as follows:

"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 per cent 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 provisions 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."

The following appears at Page 1784:

"It appears from the context of the last sentence of Section 5652-1, 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. * * *"

It would appear that under the provisions of Section 5652-13, General Code, supra, that the County Commissioners could agree to reimburse the dog warden for gasoline and oil used in such official business. As indicated in the 1927 opinion, supra, 50% of the registration fees, minus the three-tenths allowed the County Auditor for his expenses, can be used for defraying the necessary expenses of registering, seizing, impounding and destroying dogs. Certainly the operation of a motor vehicle may be necessary to effectuate the purposes of Sections 5652 et seq., General Code. Gasoline and oil would, therefore, be a necessary expense.

The only question is, whether or not the County Commissioners have agreed to furnish the same, under their existing contract with the Dog Warden. It is, of course, fundamental that in the construction of a contract the intent of the

parties governs. This must be primarily determined from the language used in the contract.

In the present contract the County Commissioners have agreed to furnish "all necessary supplies, except firearms." The Dog Warden has agreed to furnish "a dog pound and the equipment therefor."

In the absence of another provision in the contract to the contrary, it would appear that all the dog keeper is required to do is to furnish a dog pound and the equipment necessary for such pound.

A fair interpretation of the contract would permit the County Commissioners in the present situation to furnish gasoline and oil under the terms of the contract, which provide that the County Commissioners shall furnish necessary supplies. It is, therefore, my opinion, in specific answer to your question, that under the terms of the present contract, the County Commissioners may provide the dog warden with gasoline and oil for night driving and pay for the same out of the dog and kennel fund, pursuant to the provisions of Section 5652-13, General Code

Respectfully,

JOHN W. BRICKER,

Attorney General.

2939.

APPROVAL, CERTIFICATE OF AMENDMENT TO THE ARTICLES OF
INCORPORATION OF THE CENTRAL CASUALTY COMPANY

COLUMBUS, OHIO, July 19, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I have examined the certificate of Amendment to the Articles of Incorporation of the Central Casualty Company and finding the same not to be inconsistent with the constitution and laws of the United States or of the State of Ohio, I am herewith returning the same to you with my approval endorsed thereon.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2940.

DISAPPROVAL, ARTICLES OF INCORPORATION OF THE XENIA PRO-
TECTIVE, PROGRESSIVE AND FRATERNAL ASSOCIATION.

COLUMBUS, OHIO, July 19, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of the proposed articles of incorporation of The Xenia Protective, Progressive and Fraternal Association which you have submitted to me for my approval.