

twelve persons to serve as jurors in the particular proceeding, and the names after being drawn from the wheel by the clerk in the presence of the sheriff, should be certified to the insolvency court, which is authorized to issue a venire facias to the sheriff of the county, commanding him to summon the persons whose names were so secured to attend as jurors in the insolvency court at the time and place stated in the order.

Respectfully,
GILBERT BETTMAN,
Attorney General.

719.

LIVE STOCK—KILLED BY DOG—PAYMENT OF COMPENSATION TO
OWNER ILLEGAL WHEN CLAIM NOT FILED WITH TOWNSHIP
TRUSTEES WITHIN SIXTY DAYS—FINDING FOR RECOVERY.

SYLLABUS:

1. *By reason of the express provisions of Section 5840, of the General Code, the owner of live stock which has been injured by a dog, may not receive compensation from the county unless such claim with a supporting affidavit is filed with the township trustees within sixty days.*
2. *In the event a claim which has not been filed in compliance with law, is paid, the sum so paid may be recovered from the party to whom it has been paid.*

COLUMBUS, OHIO, August 8, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent communication reads:

"You are respectfully requested to furnish this department with your written opinion upon the following statement of facts:

Section 5840, General Code, 112 O. L. 353, provides for the procedure necessary to perfect a claim for the killing or injuring of sheep by dogs. It is provided that the owner of such sheep 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, 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. It is further provided that if such statements are not filed within sixty days after the discovery of such loss or injury no compensation shall be paid therefor.

The claimant had a loss June 12th, 1928, and the county commissioners were notified at once, the dog warden viewed the injury, and two free-holders appraised the loss. Claim was filed with the township trustees within sixty days but was not sworn to by claimant at the time of filing but was sworn to by him on the 29th day of September, the date of the meeting of the trustees at which the claim was allowed. The claim as allowed by the trustees was filed with the county commissioners on the 4th day of October, 1928. The claim was not acted upon by the county commissioners at their next regular meeting as provided by Section 5846, G. C., in fact, no claims presented to the county commissioners were allowed at the next regular session after being

filed but allowances were made on the 15th of December. No duplicate of the claim was filed with the county commissioners within sixty days as required by Section 5840, G. C., and as a matter of fact, no duplicate of any claim was filed with the county commissioners within sixty days.

Question 1. May the county commissioners legally allow the whole or any part of this claim at this time?

Question 2. If your answer to this question is that the county commissioners may not legally pay this claim, in the event that they do pay the claim, can the Bureau make findings for recovery for the amount so paid?"

As stated in your communication, Section 5840, General Code, provides that any owner of live stock which is killed or injured by a dog not belonging to such owner, may present to the township trustees of the township in which such injury occurred, within sixty days, a detailed statement of such loss or injury. Such statement shall be supported by an affidavit to the effect that it is a true statement of such loss. A duplicate of such statement is required to be filed with the county commissioners. Said section further provides:

"If such statements are not filed within sixty days after the discovery of such loss and injury no compensation shall be made therefor."

In view of the foregoing, the conclusion is irresistible that such an owner must file his claim, supported by an affidavit, with the township trustees within sixty days after the discovery of the injury, if payment is to be received. It is a cardinal rule of judicial interpretation in this State that money may not be drawn from the public treasury except in pursuance of express provisions of law. When a statute in plain and unambiguous language establishes specific and mandatory requirements to be complied with before certain payments may be made from a public treasury, such a condition cannot be legally waived irrespective of the hardship that may result to an individual who has inadvertently or otherwise, failed to follow the law.

You are therefore advised, in specific answer to your first inquiry, that the county commissioners may not lawfully allow a claim for injured live stock, under the provisions of Section 5840, General Code, unless such claim, together with a supporting affidavit, has been filed with the township trustees within sixty days after the discovery of the loss or injury upon which the claim is predicated.

In considering your second inquiry, you are referred to Section 286, of the General Code, which provides among other things, that your Bureau shall make examinations of all public offices and make a report of said examination. Said section contemplates that said report shall set forth any illegal expenditures of public money, and further provides for the method of collection thereof which need not be set forth herein. Of course your Bureau is familiar with the numerous opinions based upon the case of *State ex rel. vs. Fronizer, et al.*, 77 O. S. 7, as applying to those cases wherein persons entered into contracts with public authorities, and by reason of some inadvertence, all of the formalities were not observed. In such cases it has been held that, if there was no fraud or collusion, and the public received full value for the money expended and the party contracting could not be put in statu quo, such moneys could not be recovered back. However, the case you present is clearly distinguishable from the line of cases above mentioned, for the reason that no such an element as is involved in contracts of that nature is present. The Legislature has seen fit to provide relief for those whose live stock has been injured by dogs, but the method prescribed by the Legislature for obtaining such relief must be strictly followed.

In the case of *Wright vs. Clark, et al.*, decided by the Supreme Court of Ohio, on

January 19th, and reported in the issue of January 29th of the Ohio Bar, it was held as disclosed by the third branch of the syllabus:

"Neither fraud, nor conspiracy, nor unreasonable profits, are necessary elements of a cause of action for recovery of money from an officer of a city or village, under the provisions of Section 3808, General Code."

It is believed that this case is also to be distinguished from the holdings based upon the Fronizer case, for the reason that in the Wright case there was no lawful authority for such a party, as was considered therein, to enter into a contract with the municipality, and therefore the same was void from the beginning.

You are therefore advised that, in the event such a payment as you describe, is made, it will be the duty of your Bureau to make a finding for recovery, and the same may be recovered from the party receiving the same.

Respectfully,

GILBERT BETTMAN,
Attorney General.

720.

DISAPPROVAL, DEEDS TO LAND OF GREENVILLE HISTORICAL SOCIETY AND KATHERINE H. SCHLECHTY AT FORT JEFFERSON, DARKE COUNTY, OHIO.

COLUMBUS, OHIO, August 8, 1929.

HON. HARRY D. SILVER, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—You recently submitted to me a communication under date of July 25, 1929, received by you from F. E. Wilson, enclosing two warranty deeds executed respectively by the Greenville Historical Society and by one Katherine H. Schlechty, conveying to the State of Ohio certain lots and parcels of land in Neave Township, Darke County, Ohio. By the deed of the Greenville Historical Society there is conveyed to the State a tract of 3.349 acres of land in said township and county, located in the southeast quarter of Section 28, Township 11 North, Range 2 East. By the deed of said Katherine H. Schlechty, there is conveyed to the State lots 44, 45, 46 and 47 in the original town plat of Fort Jefferson in said township and county, and also a small tract of land containing .142 acres.

The transactions relating to the acquisition of the above described parcels of land are had pursuant to the authority of House Bill No. 143, passed by the 88th General Assembly, April 5, 1929, approved by the Governor, April 25, 1929, and which went into effect July 25, 1929. This act provides as follows:

"Section 1. That for the purpose of acquiring and improving the site of Fort Jefferson in Darke County, Ohio, on which was erected a military post by General Arthur St. Clair in his campaign against the Indians in 1791, and adjacent lands not to exceed eight acres, there is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund, not otherwise appropriated, the sum of three thousand dollars, which the