

"The board of deputy state supervisors and inspectors shall investigate and prosecute all violations of the laws relating to the registration of electors, the right of suffrage and the conduct of elections, and make report thereof to the state supervisor and inspector. When approved by the state supervisor and inspector and by a vote of a majority of its members, each such board may incur any expense necessary to the conduct of such *investigations and prosecutions.*"

It will be noted from the above that the authority in this section is more comprehensive than the authority given to the board of deputy state supervisors in section 4820 G. C. supra. In the latter section if prosecution for offenses relating to the conduct of elections is to be had, it is done upon the order of the board of deputy state supervisors or the state supervisor of elections, while in the former section (section 4800) the board of deputy state supervisors and inspectors of elections have authority to *investigate and prosecute*, and provision is made for the expenses incident thereto. We fail to find any similar provision for the expenses of the deputy state supervisors.

It is my opinion, therefore, that the only expenses authorized to be incurred by the board of deputy state supervisors of election, if any, are those of the mere preliminary examination on the part of the board, but which would not include the expenses of an extensive investigation or prosecution. The expenses, if any, should be incurred by the one ordered to prosecute the offenses, which evidently would be the prosecuting attorney of the county.

In answer to your second question, we fail to find any provisions for the payment of witness fees, mileage, stenographer's fees, or the expenses of the stenographer to take the testimony or similar expenses upon the part of the board of deputy state supervisors.

Replying to your third question, will say the remedies about which you inquire would be governed by the character of the offense revealed by the investigation and prosecution.

We think the foregoing is an answer to your fourth question.

Respectfully,
C. C. CRABBE,
Attorney-General.

981.

HUMANE AGENT CANNOT BE APPOINTED SPECIAL CONSTABLE TO PERFORM SAME DUTIES.

SYLLABUS:

A humane agent cannot be appointed a special constable for the purpose of enforcing the so-called humane laws—sections 10,062 to 10,084, inclusive, and section 13,491, General Code.

COLUMBUS, OHIO, December 10, 1923.

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

GENTLEMEN:—Under date of November 17th you submitted for my opinion the following question:

"May a humane agent legally be appointed as special constable and receive fees of constable for services performed as such?"

From a conversation with a member of your department, I find that you wish to know if a humane officer may be appointed a special constable for the purpose of performing duties as special constable in humane cases.

Section 10,070 G. C. sets out the duties of humane officers. Section 10,072 provides for the salaries of such officers. Section 13,491 provides that a warrant for the violation of the humane laws as to animals may be issued to such humane agents, and Section 10,070 gives them authority to make arrests for violations of any such laws and for conveying offenders before a proper court.

The Supreme Court of Ohio, in the case of *State, ex rel. Ribble*, prosecuting attorney, v. *Kleinhafer*, held that the legislature had failed to provide fees for humane officers.

There is no statutory inhibition against a humane agent acting as constable, or of constable acting as humane agents, nor is one office a check upon the other. There are, however, a number of things each can do legally that the other cannot, though it is physically possible for one person to fill both offices.

Section 13478 G. C. makes it the duty of both constables and humane agents to arrest in cruelty to animals cases, though no such duty is directly imposed on constables in cruelty to persons cases.

Section 3331 G. C. makes provision for the appointment, by justices, of special constables.

If a warrant is issued to such officer in humane cases for offenses as to animals, it could only be issued to him as such officer in view of said section 13491, and there is no other provision for issuing a warrant to him. Section 10,070 gives him authority to arrest offenders against any of the humane laws and to convey such offenders before some court of competent jurisdiction, without a warrant.

I am of the opinion, therefore, that such humane agents, being salaried officers with certain duties to perform, cannot be appointed special constables to perform these same duties.

Respectfully,

C. C. CRABBE,
Attorney-General.

982.

MUNICIPALITIES—COUNCIL OF MUNICIPALITY OWNING AND OPERATING MUNICIPAL WATER, GAS, OR ELECTRIC LIGHT PLANTS, MAY BY ORDINANCE PROVIDE FREE USE WHEN PRODUCTS ARE USED FOR MUNICIPAL OR PUBLIC PURPOSES.

SYLLABUS:

Section 3982-1 G. C., 110 O. L., 126, permits the council of a municipality owning and operating water, gas, or electric light plants, by ordinance, at its discretion, to furnish free of charge the products of such plants when said products are to be used for a municipal or a public purpose.

COLUMBUS, OHIO, December 10, 1923.

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

GENTLEMEN:—Your letter of recent date submitting certain questions to this department for answer reads as follows: