

1172.

DOGS—COUNTY COMMISSIONERS MUST PAY VALID CLAIMS FOR INJURIES TO PERSONS BITTEN BY DOGS AFFLICTED WITH RABIES—PASTEUR TREATMENT—RESPONSIBILITY OF OWNER DISCUSSED.

SYLLABUS:

1. *Under Sections 5852, General Code, the County Commissioners are bound to pay valid claims for injuries to persons bitten or injured by dogs afflicted with rabies, even though such persons are financially able to pay the physician for the Pasteur treatment received.*

2. *Under Section 5852, General Code, the County Commissioners are bound to pay valid claims for injuries to persons bitten or injured by dogs afflicted with rabies, even though the persons injured are the owners of the dog so afflicted.*

3. *Where the County Commissioners have reimbursed a person bitten by a dog afflicted with rabies, for medical attention rendered necessary thereby, there is no legal authority for a recovery by such commissioners against the owner for reimbursement of such sum. (Opinion O. A. G. 1932, No. 4112 approved and followed.)*

4. *Under Section 5851, the itemized account of the expenses incurred and the amount paid for medical and surgical attendance must be filed with the County Commissioners by the person bitten or injured by a dog afflicted with rabies, his parent or guardian if a minor, or the administrator or executor of a deceased person, and the County Commissioners are without authority to act upon a claim filed by anyone other than such persons.*

5. *To vest jurisdiction in the County Commissioners to make allowances to persons who have been injured by animals afflicted with rabies as provided by Sections 5851 and 5852, General Code, there must first be filed with said commissioners within four months after the injury, an itemized account of the expenses incurred by the person receiving such injury, verified both by his own affidavit and that of his attending physician, or verified both by his parent or guardian, if a minor, or the administrator or executor of a deceased person, and the attending physician.*

COLUMBUS, OHIO, July 27, 1933.

HON. FRED W. EVERETT, JR., *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

“Under Sections 5851 and 5852 of the General Code, are the County Commissioners bound to pay physicians for rendering the Pasteur treatment to persons injured by mad dogs where the persons injured are able to pay the physician for the treatment received? A great number of persons have been bitten by mad dogs in this county who have sufficient money and means to pay for the treatments, but have presented the bill to the County Commissioners for payment. A number of these persons were bitten by their own dog and am wondering whether the Commissioners are bound to pay for treatments for persons who own a dog and are injured by it. Also whether or not the expenses of such treatments could be collected from the individuals owning the dog. These

bills have been filed by the attending physician without any verified statement by the person injured. Is it necessary that the injured person furnish an affidavit as to the expense?"

You ask five specific questions namely:

1. Are the County Commissioners bound to pay physicians for rendering the Pasteur treatment to persons bitten or injured by a dog affected with rabies, where the person so bitten or injured is financially able to pay the physician for the treatment received?

2. Are the County Commissioners bound to pay for treatments for persons who are bitten or injured by their own dogs?

3. Can the County Commissioners after paying for such treatments have a recovery against the owner of the dog for reimbursement of such sum?

4. Who must file the itemized account of the claim with the County Commissioners?

5. Who must verify such claim by affidavit?

The particular General Code sections invoked now read after their last amendment in 1927 in 112 v. 347 (354):

Sec. 5851. "A person bitten or injured by a dog, cat or other animal afflicted with rabies, if such injury has caused him to employ medical or surgical treatment or required the expenditure of money, within four months after such injury and at a regular meeting of the county commissioners of the county where such injury was received, may present an itemized account of the expenses incurred and amount paid by him for medical and surgical attendance, verified by his own affidavit *and* that of his attending physician; or the administrator or executor of a deceased person may present such claim and make such affidavit. If the person so bitten or injured is a minor such affidavit may be made by his parent or guardian." (Italics the writer's.)

Sec. 5852. "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." (Italics the writer's.)

A short history of the legislation will serve to clarify its meaning. General Code, 5881 was first enacted March 29, 1904 (97 v. 68) and such money was to be paid out of a fund created by a per capita tax on dogs. This was amended in an act passed April 8, 1908 (99 v. 82) so that such sum could be paid out of the general fund of the county, and so as to include other animals than dogs. This section was carried into the General Code as Section 5851 by the codifying commission with some changes in phraseology. The statute was last amended in important respects in 1927 (112 v. 347), to read as given supra.

It must also be noted that the terms of Section 5852, General Code, as in force prior to the 1927 amendment (112 v. 347) were not mandatory in regard to the payment of such claims by the County Commissioners. Prior to the 1927 amendments, Sections 5851 and 5852 of the General Code read as follows:

Sec. 5851. "A person bitten or injured by a dog, cat or other animal afflicted with rabies, if such injury has caused him to employ medical or surgical treatment or required the expenditure of money, within four months after such injury and at a regular meeting of the county commissioners of the county where such injury was received, may present an itemized account of the expenses incurred and amount paid by him for medical and surgical attendance, verified by his own affidavit *or* that of his attending physician; or the administrator or executor of a deceased person may present such claim and make such affidavit. If the person so bitten or injured is a minor such affidavit may be made by his parents or guardian." (Italics the writer's.)

Sec. 5852. "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." (Italics the writer's.)

1. As to your first question:

In a former opinion of this office reported in O. A. G., 1927, Vol. III, p. 1943, as disclosed by the first branch of the syllabus it is said:

"County Commissioners may *in their discretion* make allowances to persons who have been bitten by dogs, cats, or other animals." (Italics the writer's.)

Other interpretations to the same effect are found in O. A. G. 1913, Vol. II, p. 1163, O. A. G. 1915, Vol. III, p. 2091, O. A. G. 1918, Vol. 1, p. 156. However, these interpretations were of the permissive language of Section 5852, General Code, prior to the 1927 amendments, and not of its mandatory form as of the present. These opinions are therefore no longer applicable in this specific respect. I can see nothing in the present terms of the act indicating that because the persons injured by dogs afflicted with rabies, are financially able to pay the physicians for the Pasteur treatment, that they are precluded from recovery under said section. Reading together sections 5851 and 5852 of the General Code, provision is made for payment by the County Commissioners to the physician if the injured party has not paid the physician, or to the party injured if the injured party has personally paid the physician. This would seem to indicate that the financial condition of the injured party is not relevant to the inquiry. The change from the permissive language of the act prior to the 1927 amendment, which would have left it to the discretion of the commissioners as to whether they should pay a person injured who had sufficient money and means to pay the physician for the treatment received, to the mandatory language of 5852, General Code, as now in force, leads to the same conclusion. Consequently, my answer to your first inquiry is in the affirmative.

2. In regard to your second question:

In a former opinion of this office reported in O. A. G. 1918, Vol. 11, p. 1629, this specific question was answered. Although this opinion was prior to the last amendments, there has been no change in the language of these sections in this respect. The second branch of the syllabus reads:

"Under Section 5851, General Code, a person is entitled to recover from the County Commissioners the amount he spends for medical or

surgical treatment and the expenditures incident thereto, as a result of being bitten by a dog afflicted with rabies, *even though he be the owner of the dog* so afflicted." (Italics the writer's.)

The opinion was based on the valid reasoning that a dog afflicted with rabies, usually contracted the disease from another animal, not owned by the claimant.

My answer to your second question is in the affirmative.

3. With reference to your third question:

Your attention is directed to the language of the syllabus of an opinion of my predecessor in office found in O. A. G. 1932, No. 4112, which reads:

"Where the County Commissioners have reimbursed a person bitten by a dog afflicted with rabies, for medical attention rendered necessary thereby, there is no legal authority for a recovery by such commissioners against the owner for reimbursement of such sum, whether the owner had obtained a license for such dog or not."

It is stated in the opinion that:

"There is nothing in such sections authorizing the commission to take an assignment of the injured party's claim."

In the third paragraph of the syllabus of *Ohio Savings & Trust Co., vs. Schneider*, 25 *Ohio App.* 259, it is held that:

"Courts cannot read into a statute that which does not appear therein; it being presumed that the lawmakers placed in the statute all that was intended."

The answer to your third question is in the negative.

4. In considering your fourth inquiry, it must be borne in mind that a Board of County Commissioners, being a creature of statute, can exercise only such powers as are expressly given by statute, or necessarily implied from the powers so expressly given. *State ex rel. vs. Yeatman*, 22 O. S. 546 and *Elder vs. Smith, Auditor, et al.*, 103 O. S. 370. Moreover, the Constitution of Ohio, Article X, Section 5, provides:

"No money shall be drawn from any county or township treasury, except by authority of law."

In a former opinion of this office, O. A. G. 1927, Vol III, p. 1943, this precise point was ruled as disclosed by the second and third branches of the syllabus:

"To vest jurisdiction in the County Commissioners to make allowances to persons who have been injured by animals afflicted with rabies, as provided by Section 5851 and 5852, General Code, there must first be filed with said commissioners within four months after the injury, a verified itemized statement of the expenses incurred by the person receiving such injury, his parent or guardian, if a minor, or the administrator or executor of a deceased person.

Where a person has been bitten or injured by a dog, cat, or other animal afflicted with rabies, County Commissioners are without authority to act upon a claim covering the expenses incurred and the amount

paid by such person for medical and surgical attendance filed by anyone other than the person bitten or injured, except that when such person has since died, the claim and necessary affidavit may be made by his administrator or executor, or if the person so bitten or injured be a minor, such affidavit may be made by his parent or guardian."

At page 1945 it contains the following statement:

" * * * no provision was made for presentation of claims by physicians or surgeons and in the absence of specific authority therefor, no such claim could be allowed or paid."

This opinion was made construing the language of Section 5851, before the 1927 amendments, but since there has been no change in the terms in this respect, my answer to your fourth question is that only the person injured, the parent or guardian of a minor, or the executor or administrator of a deceased person may file such itemized account of the expenditure.

5. With regard to your fifth and last question:

It will be noted that prior to the 1927 amendment, Section 5851, General Code, with reference to who should verify such itemized account, reads:

" * * * verified by his own affidavit *or* that of his attending physician." (Italics the writer's.)

It now reads:

" * * * verified by his own affidavit *and* that of his attending physician." (Italics the writer's.)

It is my opinion that such verification by affidavit is now required to be by both the person injured and the attending physician. Substantiating this interpretation, it is thought that the purpose of this change in wording was evidently to prevent the presentation of fraudulent claims.

With reference to your fourth and fifth questions, since your request states that these bills have been filed by the attending physician without any verified statement by the person injured, and inasmuch as this is not in the manner provided by law, that is, by the "persons bitten or injured" who must present an itemized account verified by him and his attending physician, the commissioners have no jurisdiction to allow and pay the claims even though they might desire so to do and the claims should therefore be disallowed.

Summarizing: It is my opinion that—

1. Under Section 5852, General Code, the County Commissioners are bound to pay valid claims for injuries to persons bitten or injured by dogs afflicted with rabies, even though such persons are financially able to pay the physician for the Pasteur treatment received.

2. Under Section 5852, General Code, the County Commissioners are bound to pay valid claims for injuries to persons bitten or injured by dogs afflicted with rabies, even though the persons injured are the owners of the dog so afflicted.

3. Where the County Commissioners have reimbursed a person bitten by a dog afflicted with rabies, for medical attention rendered necessary thereby, there is no legal authority for a recovery by such commissioners against the owner for

reimbursement of such sum. (Opinion O. A. G. 1932, No. 4112 approved and followed.)

4. Under Section 5851, the itemized account of the expenses incurred and the amount paid for medical and surgical attendance must be filed with the County Commissioners by the person bitten or injured by a dog afflicted with rabies, his parent or guardian if a minor, or the administrator or executor of a deceased person, and the County Commissioners are without authority to act upon a claim filed by anyone other than such persons.

5. To vest jurisdiction in the County Commissioners to make allowances to persons who have been injured by animals afflicted with rabies as provided by Sections 5851 and 5852, General Code, there must first be filed with said commissioners within four months after the injury, an itemized account of the expenses incurred by the person receiving such injury, verified both by his own affidavit and that of his attending physician, or verified both by his parent or guardian, if a minor, or the administrator or executor of a deceased person, and the attending physician.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1173.

TEXTBOOKS—CHARGE OF IMMORALITY OR MISCONDUCT AGAINST PRINCIPAL OF SCHOOLS UNDER CONTRACT TO HANDLE TEXTBOOKS WILL LIE WHEN—MUST PURPOSELY AND FRAUDULENTLY FAIL TO PROPERLY ACCOUNT FOR AMOUNT OF PROCEEDS.

SYLLABUS:

1. *Where a shortage occurs in the accounts of a principal of schools with whom a contract had been made for the care, custody and sale of textbooks in pursuance of Section 7715, General Code, a charge of immorality or misconduct will not lie against such principal, and his dismissal under Section 7701, General Code, will not be justified unless it appears that the shortage was intentional and fraudulent and amounted to the doing by the said principal of acts involving moral turpitude.*

2. *Where a contract had been made with a school principal for the care, custody and sale of textbooks in pursuance of Section 7715, General Code, and the principal purposely and fraudulently failed to properly account for the proceeds of the sales, a charge of immorality and improper conduct will lie against such principal of schools and he may lawfully be dismissed in accordance with the provisions of Section 7701, General Code, even though the defalcation was not brought to the attention of the board of education until after the principal had been re-hired as principal, and he had reimbursed the district for the amount of the shortage upon its disclosure by examiners from the Bureau of Inspection and Supervision of Public Offices.*