

2289.

RABIES—PROOF OF CLAIM— ALLOWANCE IN SOUND DISCRETION
OF COUNTY COMMISSIONERS.

SYLLABUS:

1. *No section of the General Code, requires that positive proof, by examination of the head of a dog, that such dog had rabies must first be submitted to a board of county commissioners before such board may legally allow a claim filed as provided by Section 5851, General Code.*

2. *Under Section 5852, General Code, the allowance therein provided for, rests within the sound discretion of the county commissioners, who may make such reasonable requirements for the purpose of proof of the facts as they may deem necessary.*

COLUMBUS, OHIO, June 28, 1928.

HON. GEORGE H. BLECKER, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR:—This will acknowledge your letter dated June 21, 1928, which reads as follows:

"Within the last week we have had a mad dog scare in this county and four or five persons have been bitten by a dog supposed to be afflicted with rabies, in fact, a couple of people were injured quite severely. These people have taken treatment and have presented bills to the county commissioners for payment as provided in Section 5851, G. C.

There was quite a wholesale search made for the dog that inflicted these wounds on these different parties and there seems to be no question from the description that the same dog bit the several parties, but they have been unsuccessful in capturing the dog so that his head might be examined to determine whether or not he had the rabies. Veterinaries tell me that if he is not captured in two or three days that he would probably sneak off and die some place as that is the nature of the disease.

The question I am presenting to you is, whether or not the county commissioners are authorized under this Section 5851, G. C., to pay for these injuries without positive proof by examination of the head of the dog that the dog has the rabies.

Another question—could the commissioners be satisfied by proof by means of affidavits of a veterinary and individuals who have some knowledge of dogs that in their opinion such dog, by his actions, indicated to them that he did have the rabies and therefore be authorized in paying said bills as presented?

A couple of parties bitten are people of circumstances that should have this help from the county. However, I realize that the financial condition can not be considered in interpreting this section of the law."

Section 5851, General Code, provides:

"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."

Section 5852, General Code, reads as follows:

"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 in 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."

These sections of the General Code, have been construed in several recent opinions of this office. I refer to Opinion No. 1043, dated September 22, 1927, addressed to the Prosecuting Attorney of Athens County, the syllabus of which reads:

"Persons bitten or injured by dogs, cats or other animals afflicted with rabies, may be reimbursed for expenditures incurred on account thereof, to the extent of \$200.00, from the general fund of the county wherein the injury was incurred."

See also Opinion No. 1100, dated October 3, 1927, addressed to the Prosecuting Attorney of Lawrence County, the syllabus of which is as follows:

"1. County commissioners may in their discretion, make allowances to persons who have been bitten by dogs, cats or other animals afflicted with rabies, for necessary medical and surgical expenses growing out of said injuries, which injuries have been sustained prior to the effective date of House Bill No. 164, passed by the 87th General Assembly, (112 v. 354), wherein Sections 5851 and 5852, General Code, are amended.

2. 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, a verified itemized statement of the expenses incurred by the person receiving such injury, or his parent or guardian, if a minor, or the administrator or executor of a deceased person.

3. 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 any one other than the person bitten or injured, except that where 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."

and Opinion No. 1609, dated January 21, 1928, addressed to the Prosecuting Attorney of Warren County, the syllabus of which reads,

"1. A board of county commissioners is without authority to order the payment of a claim presented by a person bitten or injured by a dog, cat or other animal unless such animal was afflicted with rabies.

2. Under the provisions of Sections 5851 and 5852, General Code, a board of county commissioners may allow claims, within the limit of \$200.00 fixed by said Section 5852, presented in instances where the claimant has been exposed to rabies by reason of coming in contact with a dog, cat or other animal afflicted with rabies.

3. Under the provisions of Sections 5851 and 5852, General Code, a board of county commissioners may allow claims presented by the person injured, within the limit of \$200.00 fixed by said Section 5852, where the dog or other animal afflicted with rabies is the 'proximate cause' of the injury received, irrespective of the nature of the injury."

No section of the General Code requires that positive proof by examination of the head of the dog be first had before a board of county commissioners may legally allow a claim otherwise properly filed. Your attention is directed to the discussion which appears in Opinion No. 1100, *supra*, to the effect that the allowance of such claims is discretionary with such board.

I believe the opinions above referred to answer the questions which you present.

Summarizing, and answering your questions specifically, it is my opinion that:

1. No section of the General Code, requires that positive proof, by examination of the head of a dog, that such dog had rabies must first be submitted to a board of county commissioners before such board may legally allow a claim filed as provided by Section 5851, General Code.

2. Under Section 5852, General Code, the allowance therein provided rests within the discretion of the county commissioners, who may make such reasonable requirements for the purpose of proof of the facts as they may deem necessary.

I am enclosing herewith copies of the opinions referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2290.

SLOT MACHINE—WHEN A GAMBLING DEVICE.

SYLLABUS:

A slot vending machine, which upon deposit of a five cent coin, will release a package of mints together with trade or premium checks, which checks have a cash or trade value, is a gambling device within the provisions of Sections 13056 and 13066, General Code.

COLUMBUS, OHIO, June 28, 1928.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads as follows:

"I have been requested by the sheriff of this county to give him the status of slot machines, which are being operated throughout the county. These