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HORSES, ETC., KILLED OR INJURED BY DOGS — OWNER, TO BE ENTITLED TO COMPENSATION FOR SUCH DAMAGE MUST NOTIFY COUNTY COMMISSIONER WITHIN FORTY-EIGHT HOURS AFTER DISCOVERY OF LOSS OR INJURY — SUCH REQUIREMENT, REGARDLESS OF TIME OF DISCOVERY OF CAUSE OF LOSS OR INJURY—SECTION 5840 G. C.

SYLLABUS:

Under the provisions of Section 5840, General Code, the owner of horses, etc., which have been killed or injured by dogs must give notice to a county commissioner within forty-eight hours after the discovery of the loss or injury regardless of the time of the discovery of the cause of the loss or injury, if such owner is to be entitled to compensation for such damage.

Columbus, Ohio, December 2, 1940.

Hon. Hugh A. Staley, Prosecuting Attorney,
Greenville, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

“On the 2nd day of July, 1940, a farmer living in one of the townships of this county lost a cow. On the same day he called a veterinarian, and the veterinarian's diagnosis was ‘the animal showed typical symptoms of rabies.’ The brains of the animal were taken to the local Health Commissioner, and he, in turn, sent them to a laboratory to be tested for rabies, and did not receive the report of this examination until the 2nd day of August, 1940. This report clearly showed that the animal had died of rabies. Immediately upon the receipt of this report, the farmer notified one of the commissioners, as provided in Section 5840 of the General Code, and filed his application within the time specified for the loss of this animal.

The question which I would like to have your opinion on is the interpretation of the language of Section 5840 as it applies to this case, wherein it is provided that ‘in order to be entitled to enter a claim for damages, must notify a county commissioner in person or by registered mail within 48 hours after such loss or injury has been discovered.’

It is the contention of the farmer that he did not actually know that the loss was sustained by rabies until August 2, the actual loss

occurring, however, on July 2. Therefore, has the claimant substantially complied with Section 5840 of the General Code, so that the commissioners may consider the merits of his claim?"

Section 5840, General Code, provides:

"Any owner of horses, sheep, cattle, swine, mules and goats which have been injured or killed by a dog not belonging to him or harbored on his premises, in order to be entitled to enter a claim for damages must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered, and such commissioner shall immediately notify the dog warden or other enforcing officer of such loss or injury, whose duty it shall be to have the facts of such loss or injury investigated at once. The owner of such horses, sheep, cattle, swine, mules or goats, 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 done, 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. If such statements are not filed within sixty days after the discovery of such loss and injury no compensation shall be made therefor. Such statement shall set forth the kind, grade, quality and value of the horses, sheep, cattle, swine, mules and goats so killed or injured, and the nature and amount of the loss or injury complained of, the place where such loss or injury occurred, and all other facts in the possession of the claimant which would enable the dog warden to fix the responsibility for such loss or injury. Statements of the nature and amount of the loss or injury complained of shall be supported by the testimony of at least two freeholders who viewed the results of the killing or injury and who can testify thereto."

The foregoing section requires that notice be given within forty-eight hours after the loss or injury has been discovered. In the situation you have presented the farmer discovered the loss of the cow on July 2, but did not definitely ascertain that the animal was afflicted with rabies until August 2, whereupon he immediately notified one of the county commissioners.

With reference to this type of claim, it was said in the case of Franklin County vs. Jackson, et al., 178 Ark. 689:

"Appellee's right to compensation for the damage done by the dog of an unknown owner is of statutory creation, and the statute which creates the right prescribes the time and manner within which one must proceed to obtain its benefits. It is a general rule that, where a cause of action does not exist at common law, but is created by statute, the right conferred by the statute must be enforced within the time and in the manner and form prescribed by the statute which created it. * * *

The 48 hours given the owner after he is apprised of the killing or injury of his stock to notify the justice of the peace is in the nature of a statute of limitations and while it does appear to be unusually short, this was a question which was addressed to and was decided by the legislature. We might surmise why the time was made so short, but we are neither required nor permitted to do so, as the legislature, in creating the cause of action, had the right and power to prescribe the time and manner within which it should be enforced. This it did, and, as appellees failed to comply with this situation in the creation of their cause of action, they have no cause of action under the statute."

The same idea was expressed in the case of *Eddy vs. Honey Creek Tp.*, White County, 63 Ind. App. 527, wherein the fourth branch of the syllabus reads:

"Under Burns Ann. St. 1914, Sect. 3269, providing that owners of live stock killed or damaged by dogs shall within ten days from the time thereof report certain facts to the township trustees to render the township liable, the report must be made within ten days after the injury regardless of when the animal died."

It was stated in the opinion:

"It is evidently the intention of the legislature to fix a definite time in which such owner should report to the township trustee, in order to receive compensation, so that the matter might be brought to his notice while the facts were fresh, in order that he might investigate and protect the fund in his hands from wrongful and excessive claims."

It is obvious that the forty-eight hour limitation is a mandatory rather than a directory provision. Not only is this the rule pronounced in the foregoing cases, but Section 5840, General Code, specifically provides that the owner of the animals injured by dogs must give notice within forty-eight hours after the discovery of the loss or injury "in order to be entitled to enter a claim for damages". Consequently, unless a county commissioner is notified within such time, the claim may not be considered. Such a time limit was deemed necessary so that the matter might be investigated while the facts were fresh.

It will be noted that such period of time extends from the time of the discovery of the loss or injury rather than from the time of the discovery of the cause of the loss or injury. If the Legislature had intended the latter rule to prevail, it, no doubt, would have used appropriate language to effect such intention.

It is also significant that Section 5840, General Code, does not require

that the farmer notify a county commissioner of any fact other than that the animal has been killed or injured. The claimant has sixty days in which to ascertain the facts and file a detailed statement of the same with township trustees and the county commissioners.

In view of the above and in specific answer to your inquiry, I am of the opinion that by virtue of the provisions of Section 5840, General Code, the owner of horses, etc., which have been killed or injured by dogs must give notice to a county commissioner within forty-eight hours after the discovery of the loss or injury regardless of the time of the discovery of the cause of the loss or injury, if such owner is to be entitled to compensation for such damage.

Respectfully,

THOMAS J. HERBERT,
Attorney General.