

Note from the Attorney General's Office:

1938 Op. Att'y Gen. No. 38-2671 was overruled by
1994 Op. Att'y Gen. No. 94-086.

After carefully examining said executed contract, it is my opinion that the same is correct as to legality and form and is a binding contract for the purposes for which the same was executed between the county of Cuyahoga and the State of Ohio.

I have, therefore, endorsed my approval on said contract in duplicate and am this day returning the same herewith.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2671.

DOG POUND—MONEY FOR CONSTRUCTION SHOULD BE
TAKEN FROM GENERAL FUND NOT DOG AND KENNEL
FUND.

SYLLABUS:

Money for the construction of a dog pound by county commissioners should be taken from the general fund and not from the dog and kennel fund.

COLUMBUS, OHIO, July 7, 1938.

HON HUGO ALEXANDER, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR: This will acknowledge the receipt of your recent communication. Your request for an opinion reads as follows:

“The County Commissioners of our County are desirous of building a dog pound. The question arises from which fund money necessary for the building of the same should be taken. Should this money be taken for the building of said pound from the dog and kennel fund or from the general fund.”

Those provisions relating to the responsibility of licensing and impounding dogs may be found in Sections 5652 to 5653, General Code, inclusive. Section 5652-8, General Code, relative to the duties of commissioners, specifically provides:

“County commissioners shall provide nets and other suitable devices for the taking of dogs in a humane manner, and except as hereinafter provided, also provide a suitable place for im-

pounding dogs, and make proper provision for feeding and caring for the same, and shall also provide humane devices and methods for destroying dogs. * * *”

It is further provided by Section 5652-12, General Code, that all moneys received in connection with the administration of the above sections (5652 to 5653, G. C.) shall be used to create a dog and kennel fund. Section 5652-13, General Code, states that this fund shall be used as follows:

“The registration fees provided for in this act shall constitute a special fund known as the dog and kennel fund which shall be deposited by the county auditor in the county treasury daily as collected and be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets and other equipment, also paying the compensation of county dog wardens, deputies, pound keeper and other employees necessary to carry out and enforce the provisions of the laws relating to the registration of dogs, and for the payment of animal claims as provided in G. C. Sections 5840 to 5849, both inclusive, and in accordance with the provisions of G. C. Section 5653. Provided, however, that the county commissioners by resolution shall appropriate sufficient funds out of the dog and kennel fund, said funds so appropriated not to exceed 50% of the gross receipts of said dog and kennel fund in any calendar year, not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs in accordance with the provisions of G. C. Section 5652 and, supplemental sections.”

From the language used in the first part of this section it appears that the dog and kennel fund is to sustain all the administration and upkeep expenses necessitated under these sections. However, by express provision in the latter part of Section 5652-13, *supra*, expenditures from the dog and kennel fund for administration expenses are specifically limited and it is provided that they shall not exceed 50% of the gross receipts of this fund.

It is observed that with such a limitation upon expenditures, the construction of a dog pound would be impracticable, if not impossible. It is also observed that a dog pound can not be included under “the cost of furnishing all blanks, records, tags, nets and other equipment”, for the construction of a dog pound in its nature is a permanent improvement

rather than equipment, and as such should be made under the general authority to construct and build conferred by Section 2433, General Code.

In view of these facts, it is my opinion that money for the construction of a dog pound by county commissioners should be taken from the general fund and not from the dog and kennel fund.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2672.

DISAPPROVAL--BONDS, PIQUA CITY SCHOOL DISTRICT,
MIAMI COUNTY, OHIO, \$4,200.00.

COLUMBUS, OHIO, July 7, 1938.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Piqua City School District, Miami
County, Ohio, \$4,200.00.

I have examined the transcript submitted to me relative to the above bond issue and wish to advise you that I will be unable to approve this issue for the following reasons:

In the financial statement submitted by the clerk, the tax valuation of this subdivision is therein shown to be \$19,511,910. Under the provisions of Section 2293-15, General Code, this subdivision could therefore incur indebtedness without a vote of the people to the extent of one-tenth of one per cent of such valuation or, in concrete figures, \$19,511. It is also shown in this financial statement that this subdivision now has outstanding bonds or notes issued without authority of an election in the amount of \$27,700, but that in exceeding their one-tenth of one per cent, they have now outstanding \$14,950 in bonds issued for the purpose of a field house and apparently issued under the provisions of House Bill 544, effective June 7, 1935. Although the clerk has noted that these bonds are self liquidating, that is being retired by athletic receipts, there is no statutory authorization for such a statement and it must be considered that these bonds are general obligations of the school district. Apparently, these bonds were issued in excess of the net indebtedness limitations under author-