

In the case of *City of Williamsburg vs. Weesner et al*, 176 S. W. 224, the Kentucky Court of Appeals had before it a situation where an entire new city council consisting of six members were duly elected for the term of two years and three newly elected members refused to take the oath of office or attend meetings. In holding that these three men had abandoned their offices, the court did not consider that three of the outgoing members of council held over because of failure of the three persons mentioned to qualify.

In the case at hand the people have expressed their will in favor of a decided and sweeping change in their representation in council. Under the circumstances I believe that it is your duty as prosecuting attorney of Hardin County to advise the four councilmen-elect who served as election judges that they are ineligible to assume the positions to which they have been elected.

In view of the above citations and in way of specific answer to your questions, I am of the opinion that:

1. Where an entire new village council of six members is elected and four of such councilmen-elect are unable to qualify because of having served as election judges in violation of Section 5092, General Code, none of the outgoing members of council hold over because of such situation.

2. The two duly elected members of council not constituting a majority, have no power to fill the four vacancies, but after expiration of the thirty day period provided in Section 4236, General Code, the vacancies will be filled by appointment of the mayor.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1338.

CLAIM—LIVE STOCK KILLED BY DOG—DOG WARDEN'S FAILURE TO VIEW SUCH STOCK DOES NOT PREVENT COMMISSIONERS FROM PAYING CLAIMANT.

SYLLABUS:

The failure of a dog warden to view live stock that has been injured or killed by a dog not belonging to the claimant, or harbored on his premises, does not bar the board of county commissioners from allowing the claim for such loss or injury to live stock provided such claim is duly presented by the claimant, in accordance with the provisions of Section 5840, of the General Code.

COLUMBUS, OHIO, December 28, 1929.

HON. GEO. E. SCHROTH, JR., *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“In re: Sec. 5840, G. C.

All provisions in the above statute were complied with by claimant for the loss of certain sheep, killed by a dog; except the requirement that the dog warden did not actually view the sheep. The dog warden investigated the loss, however, and found the facts to be as represented by the claimant and the appraisers. It did not occur to the claimant that it was necessary for the dog warden to first view the sheep before they were disposed of. The above claim is a bona fide claim but the Commissioners would like to know

whether or not it should be allowed. I thought it would be all right to allow the claim but it seems that they would like to have a statement from your office regarding this matter."

Section 5840 of the General Code, to which you refer, is as follows:

"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."

An examination of this statute discloses that the conditions precedent to entitle 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 are as follows:

1. He must notify the county commissioners in person or by registered mail within forty-eight hours after such loss or injury has been discovered.
2. He must 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.
3. He must present a duplicate of such statement to the county commissioners of the county in which such loss or injury occurred.

In order for a claimant to collect damages under the provisions of Section 5840, General Code, the foregoing conditions precedent must be complied with. The statute does not impose a duty upon the person making a claim to keep the animals that were injured or killed until same may be viewed by the dog warden. While it is the duty of the dog warden to investigate the facts of the loss or injury at once, such investigation does not necessarily mean that he is to view the animal that is killed or injured. The proof of this fact is to be supplied by the testimony of at least two freeholders who viewed the result of the killing or injury and who can testify thereto.

If the claimant for damages has a meritorious claim and has fully performed the requirements of the statute, and can substantiate the proof of the nature and amount of the loss or injury complained of by the testimony of two freeholders who viewed the results of the killing or injury, the fact that the dog warden failed to view the body will not bar a board of county commissioners from allowing the claim for such loss

or injury. However, if the claimant is unable to support his statement as to the nature and amount of loss or injury by the testimony of at least two freeholders who viewed the results of the injury or loss, the county commissioners would not be authorized to allow the claim.

In specific answer to your inquiry, I am of the opinion that the failure of a dog warden to view live stock that has been injured or killed by a dog not belonging to the claimant, or harbored on his premises does not bar the board of county commissioners from allowing the claim for such loss or injury to live stock provided such claim is duly presented by the claimant in accordance with the provisions of Section 5840, of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1339.

**PUBLIC CEMETERY—OWNED BY TOWNSHIP TRUSTEES—TITLE VESTS
IN VILLAGE WHEN TOWNSHIP INCLUDED IN SAID VILLAGE.**

SYLLABUS:

Where a public cemetery operated by township trustees under the provisions of Section 3451, General Code, becomes located within the boundaries of a village, it becomes the property of said village through the terms of Section 4174, General Code, even though the township trustees failed to give a deed to said property to the village before their terms expired.

COLUMBUS, OHIO, December 28, 1929.

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

GENTLEMEN:—This will acknowledge receipt of your recent request for my opinion, which reads as follows:

“A township owning and operating a cemetery has been included within the limits of a village, and by virtue of the provisions of Sec. 3512, G. C., all township offices were abolished and the duties are being performed by the corresponding officers of the village. The township trustees, at the time of the abolishment of their office, did not give the village title to this cemetery by making a deed.

Question: Does the village, under these conditions, automatically take title to the township cemetery?

We are enclosing herewith copy of a letter addressed to Mr. D. L. Rupert, State Examiner, in relation to this matter.”

Section 3451, General Code, provides that the title of all public cemeteries located without the corporate limits of any city or village, shall be vested in the trustees of the township where located.

Section 3512, General Code, provides:

“When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, reg-