

which may be pursued in such college or university beyond the scope of the public high school. In like manner such board or boards of education may contract for a term not exceeding one year with each other or with a private corporation or association not for profit, maintaining and furnishing a museum of art, science or history, or providing musical instruction, for the purpose of obtaining in such school district such instruction or other educational services as can be rendered to the schools by such private corporation or association."

It will be observed from the provisions of the foregoing statute, that the details of any agreement made under authority thereof are left to the discretion of the boards of education making the same, limited only by what might amount to an abuse of discretion, and the constitutional limitations on the extension of the credit of the state in the aid of private institutions, as contained in Article VIII, Section 4 of the Constitution of Ohio, which reads as follows:

"The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever."

The agreement as drawn does not presume to take away any part of the control of the public school system of the state from the duly elected public officials charged by law with the operation of the public schools. It permits the use of the facilities of the normal school by the school of education of the university only in so far as such use "does not interfere with the proper use of such facilities by other divisions and departments for which these facilities are provided." This provision obviously, by its terms, cannot result in an illegal diversion of public school funds.

The agreement does not, in my opinion, bind the members of the city board of education to serve on the administrative board created for the purpose of administering the affairs of the school of education of the university. The city board of education is elected for the purpose of administering the public schools of the city of Cleveland, of which the normal school is a part. If these members feel that by serving on this board they are rendering the work of the normal school more efficient, there can be no objection to their doing so, and in fact they should be commended for it. No agreement, however, can so operate as to require persons who may be elected to a city board of education, in the future, to serve on this board. It will be observed that a contract authorized by the terms of Section 7650-1, *supra*, must be limited in its operation to a term not exceeding one year. In my opinion, the agreement submitted is not illegal, and so far as appears on its face, is unobjectionable.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2306.

DOGS—FAILURE OF COUNTY COMMISSIONERS TO APPOINT DOG WARDEN NOT BAR TO CLAIM—HOW CLAIM IS SECURED—LAW LIBERALLY CONSTRUED.

SYLLABUS:

1. *The failure of a board of county commissioners to appoint a dog warden and deputies, as provided by Section 5652-7, General Code, is no bar to such board of com-*

missioners allowing a claim for loss or injury to live stock, providing such claim was duly presented as provided by Section 5840, General Code.

2. *By the terms of Section 5840, General Code, in order to entitle any owner of horses, etc., which have been injured or killed by a dog not belonging to him or harbored on his premises to enter a claim for damages, such owner must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.*

3. *The requirement of Section 5840, General Code, to the effect that the owner of live stock 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" should be liberally construed to effect the purpose of the Legislature and any notice which brings to the personal knowledge of any commissioner the loss or injury sustained is sufficient.*

COLUMBUS, OHIO, July 2, 1928.

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

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

"You are respectfully requested to render this department your opinion upon the following:

In a certain county in this state the county commissioners have neglected to appoint a dog warden as required by Section 5652-7, G. C., (112 O. L. 348). Section 5840, G. C., as amended (112 O. L. 353), provides that upon receiving notice in person or by registered mail within forty-eight hours after a loss or injury has been discovered, the county commissioners 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.

Question 1: If the person sustaining damages notified the county commissioners as provided in this section, may the county commissioners legally allow the claims without an investigation by the dog warden or other enforcing officer?

Question 2: In the event that notice is given to the county commissioners by mail other than registered mail, may such a claim be legally allowed with or without an investigation by the dog warden?"

Section 5840, General Code, in so far as pertinent to the question that you present, 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 or injury no compensation shall be made therefor. * * * "

Section 5846, General Code, provides :

"The county commissioners at the next regular meeting after such claims have been submitted as provided in the preceding sections shall examine same and may hear additional testimony or receive additional affidavits in regard thereto and may allow the amount previously determined by the township trustees or a part thereof, or any amount in addition thereto as they may find to be just, to be paid out of the fund created by the registration of dogs and dog kennels and known as the dog and kennel fund. Such claims as are allowed in whole or in part shall be paid by voucher issued by the county auditor at the close of the following calendar month, after such claims have been finally allowed. If the funds are insufficient to pay said claims, they shall be paid in the order allowed at the close of the next calendar month in which there is sufficient funds available in said dog and kennel fund."

You will note that the conditions precedent to entitle any owner of the kinds of live stock enumerated in the statute, which have been injured or killed by a dog not belonging to him or harbored on his premises to enter a claim for damages are :

1. He must notify a county commissioner 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 after the discovery of such loss or injury a detailed statement, supported by affidavit, 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.

By the terms of Section 5846, supra, at the next regular meeting after claims have been submitted as provided in Section 5840, supra, et seq., the county commissioners are required to examine the same and may allow the amount previously determined by the township trustees, or a part thereof, or such amount in addition thereto as they may find to be just.

Section 5652-7, General Code, provides in part as follows :

"County commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation, as such county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs, and the payment of compensation for damages to live stock inflicted by dogs. * * * "

You state that in a certain county in Ohio the county commissioners have failed to comply with the provisions of Section 5652-7, supra. Obviously, if no dog warden or deputies have been appointed or employed the provisions of Section 5840, supra,

that "such commissioners 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" cannot be complied with. However, the failure of the board of county commissioners properly to perform its duties cannot prejudice or defeat the right of a meritorious claimant to have his claim presented or allowed.

Specifically answering your first question it is my opinion that the failure of a board of county commissioners to appoint a dog warden and deputies, as provided by Section 5652-7, General Code, does not prevent such board of commissioners allowing a claim for loss or injury to live stock, providing such claim was duly presented as provided by Section 5840, General Code.

Your second question was answered in a recent opinion addressed to you, being Opinion No. 1930, dated April 2, 1928, the syllabus of which reads :

"1. By the terms of Section 5840, General Code, in order to entitle any owner of horses, sheep, cattle, swine, mules and goats, which have been injured or killed by a dog not belonging to such owner, or harbored on his premises, to enter a claim for damages, such owner must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.

2. A board of county commissioners is without authority to allow a claim for damages, presented under the provisions of Section 5840, General Code, unless the claimant notified a county commissioner in person or by registered mail within forty-eight hours after the loss or injury has been discovered."

In the opinion it was said as follows :

"By the plain and unambiguous language used in Section 5840, *supra*, the Legislature has expressed its intent that, in order for any owner of horses, sheep, cattle, swine, mules and goats injured or killed by a dog not belonging to him, or harbored on his premises, to be entitled to enter a claim for the damage incurred, the claimant *must* notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.

It is elementary that boards created by statute, such as board of county commissioners, have only such powers as are expressly given by statute and those necessarily implied to carry into effect the powers expressly granted. This principle is especially applicable with reference to the financial affairs of a county and the powers and duties of county commissioners with respect thereto. Public moneys and public property, whether in the custody of public officers or otherwise, constitute a public trust fund, which can only be disbursed by clear authority of law.

The notification within the time expressly provided for, in Section 5840, *supra*, is a condition precedent, which must be complied with in order to entitle a claimant to enter his claim for damages. The reasons for such notice are obvious, the purpose being to enable the county commissioners to have an investigation of the damage sustained made by the proper officer without delay, and I deem it unnecessary to comment upon the same herein."

You will observe that Section 5840, *supra*, provides that an owner, whose stock has 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 commis-

sioner *in person or by registered mail* within forty-eight hours" after the discovery of such loss or injury. While the Legislature has expressly and specifically prescribed that, if the notice be given by mail, it shall be given by *registered mail*, no particular method is laid down for giving the notice "in person." It is my opinion that the words "notify a county commissioner in person" should be liberally construed to effect the purpose of the law and that any notice which actually brings to the personal knowledge of a county commissioner the fact of the loss or injury, within the time limit designated in the statute, should be held sufficient to authorize the payment of a claim otherwise proper. That is to say, I do not believe that the words "notify a county commissioner in person" should be construed to mean that the owner must himself go to one of the commissioners and personally notify him of the loss or injury, but that, on the other hand, he may employ any agency which will actually notify one of the commissioners in person of the loss or injury sustained. If the owner, however, chooses to employ the mails as the means of notification, he should follow the directions of the statute and send such notice by registered mail.

In view of the foregoing, it is my opinion that a board of county commissioners is without authority to allow a claim for damages, presented under the provisions of Section 5840, General Code, unless the claimant notified a county commissioner in person or by registered mail within forty-eight hours after the loss or injury has been discovered.

It is further my opinion that the requirement of Section 5840, General Code, to the effect that the owner of live stock 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" should be liberally construed to effect the purpose of the Legislature and that any notice which brings to the personal knowledge of any commissioner the loss or injury sustained is sufficient.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2307.

APPROVAL, 14 GAME REFUGE LEASES.

COLUMBUS, OHIO, July 2, 1928.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN :—This will acknowledge your letter of recent date in which you enclosed the following Game Refuge Leases in duplicate, for my approval :

<i>No.</i>	<i>Name</i>	<i>Acres</i>
1107	Ida F. Steele, Jackson County, Coal Township-----	37
1108	George W. Hayth and Effie J. Hayth, Jackson County, Coal Twp.---	38
1109	J. W. Parmiter, Morgan County, Meigsville Township-----	168
1110	J. W. Parmiter, Morgan County, Morgan Township-----	103
1111	Cleveland Bryan, Morgan County, Meigsville Township-----	15
1112	Harvey Archer, Morgan County, Meigsville Township-----	18
1113	Alvin B. Parmiter, Morgan County, Morgan Township-----	112
1114	Samuel McKibben, Morgan County, Morgan Township-----	24
1115	William Huck, Morgan County, Morgan Township-----	160