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OFFICIAL OPINION NO. 27

June 28, 1955

Mr. John Peters
Treasurer of State
242 State House
Indianapolis 4, Indiana

Dear Mr. Peters:

I have your letter of May 4, 1955, in which you ask whether you should file a claim with the State Auditor requesting a check be drawn in favor of Switzerland County covering the county's share of the expenses of the brucellosis program. This involves the interpretation of the Acts of 1955, Ch. 268, which contained an emergency clause, approved on March 11, 1955, and which amended that portion of the Domestic Animal and Poultry Disease Code of Indiana concerning brucellosis. I direct your attention particularly to the Acts of 1955, Ch. 268, Sec. 2 (e), which states:

“(e) In the event it should become necessary, as a matter of expedience, to proceed in any county before funds have been appropriated to defray the county's share of the expense, the livestock sanitary board shall arrange for an advancement of a sufficient amount of money to pay all expenses which ordinarily would be borne by the county, provided a satisfactory agreement can be entered into with the county commissioners, whereby the state shall be reimbursed by the county for the full amount of any money so advanced. To provide for such contingencies there is hereby established a revolving fund of one hundred thousand dollars from which such advancements may be made by the treasurer of state, when so requested and duly authorized by the secretary of the livestock sanitary board. This fund shall be known as the 'Brucellosis Eradication Contingency Fund' and shall be available for usage for a period of two years only, from the effective date of this act. All reimbursements of funds by counties shall be deposited with the treasurer of state in liquidation of any advancements made.”

First, it must be noted that although this subsection provides for an advancement to the county of a sufficient amount of

money to pay all expenses which ordinarily would be borne by the county, it does not purport to change the prerequisites necessary to institute a county brucellosis program. Thus, it is necessary that the board of county commissioners of such county be in receipt of petitions signed by seventy-five per cent of the cattle owners representing seventy-five per cent of the cattle population of the county expressing a desire to participate in a brucellosis program as required by the Acts of 1955, Ch. 268, Sec. 2 (a). The board of county commissioners must then request an estimate of the cost to the county for carrying out the program; Acts of 1955, Sec. 2 (a), *supra*. The Indiana State Livestock Sanitary Board must then submit the estimate to the board of county commissioners together with a recommendation that a request be submitted to the County Auditor in sufficient time to have the amount included in his budget for the next ensuing year; Acts of 1955, Ch. 268, Sec. 2 (c).

After these steps have been accomplished, the county council is enjoined with the duty of making an appropriation sufficient to carry out the program; Acts of 1955, Sec. 2 (c), *supra*. Since the statute directs that the county council shall make the appropriation once the above conditions are met, if the county council should refuse to make the appropriation, it could be compelled to do so by mandate.

State *ex rel.* Simpson v. Meeker (1914), 182 Ind. 240,
105 N. E. 906.

Secondly, there must be unanimity between the board of county commissioners and the county council on the one hand and the Indiana State Livestock Sanitary Board on the other that it is necessary as a matter of expedience, to proceed in the county before funds can be appropriated to defray the county's share of the expense; Acts of 1955, Ch. 268, Sec. 2 (e).

Lastly, satisfactory arrangements must be concluded between the county and the Indiana State Livestock Sanitary Board whereby the state shall be reimbursed by the county for the full amount of any money so advanced. It is the duty of the secretary of the Indiana State Livestock Sanitary Board to notify you when satisfactory arrangements have been concluded and to request the advancement; Acts of 1955, Sec. 2

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(e), *supra*. Thus, the onus of determining when the conditions necessary to give rise to an advancement have been met rests with the Indiana State Livestock Sanitary Board. A letter from the secretary of the Indiana State Livestock Sanitary Board stating: (1) that it is deemed necessary as a matter of expedience to proceed in a county before funds can be appropriated to defray the county's share of the expenses; (2) that the Indiana State Livestock Sanitary Board has concluded a satisfactory agreement with the county whereby the state shall be reimbursed by the county for the full amount of any money advanced; and (3) the exact amount of the county's share of the expense of the brucellosis program, is your authorization to file a claim with the State Auditor requesting a check in the amount specified in the letter to be drawn in favor of the particular county. In your request for an opinion, you included a letter containing the three conditions heretofore alluded to which you received from Dr. Joe W. Green, the secretary of the Indiana State Livestock Sanitary Board. You are then, authorized by virtue of such letter to file the claim with the State Auditor.

You also enclosed in your request an ordinance passed by the county council of Switzerland County agreeing to reimburse the "Brucellosis Eradication Contingency Fund" for the advancement of the county's share of the expenses of the brucellosis program. Although it is not necessary for you to determine the sufficiency of this ordinance under the conclusions which I have reached as to your duties in requesting the advancement, nevertheless the issue of what constitutes a satisfactory agreement for reimbursement is the crux of the entire matter of the advancement, and therefore I have examined the ordinance to determine if it constitutes a satisfactory agreement to reimburse the state for any advancement which might be made. The ordinance in its preamble recites that the board of county commissioners have received petitions containing the requisite signatures, that they have examined the petitions and found them to be in proper order, that they have requested and received from the Indiana State Livestock Sanitary Board an estimate of the cost to the county for carrying out the brucellosis program, which estimate was twenty-two hundred and fifty (\$2,250.00) dollars, that the County Auditor has duly presented a request for an appropriation in an amount equal

to the estimate, that it is deemed necessary, as a matter of expediency, to proceed with the program immediately, and that it is deemed necessary to arrange for an advancement from the "Brucellosis Eradication Contingency Fund" of a sufficient amount of money to pay the share of the expenses to be borne by the county.

The enacting clause of the ordinance states :

* * *

"BE IT ORDAINED by the County Council of Switzerland County, Indiana, that an emergency exists for the expenditure of \$2250.00, as the County's share of the expenses of the brucellosis program which were not provided for in the annual detail budget, for the expenses of the County Government and its institutions for the year ending December 31, 1955, and \$2250.00 shall be included in the regular annual budget for the year ending December 31, 1956, and shall be appropriated and made available as of January 1, 1956, to reimburse the 'Brucellosis Eradication Contingency Fund,' for the advancement of \$2250.00 representing the county's share of the expenses of the brucellosis program."

This ordinance represents a satisfactory agreement whereby the state shall be reimbursed by Switzerland County for the twenty-two hundred and fifty (\$2,250.00) dollars so advanced.

I am therefore of the opinion you may file a claim with the State Auditor requesting a warrant be drawn in favor of Switzerland County.