

OPINION NO. 95-024**Syllabus:**

1. There may exist more than one society for the prevention of cruelty to animals within a county.
2. It is within the province of the probate court to determine the qualifications of the persons selected by a humane society to serve as agents as well as the necessity of the services provided by the agents within a given county.

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio
By: Betty D. Montgomery, Attorney General, September 25, 1995

You have requested an opinion addressed to the following question:

Whether there may be more than one humane society concurrently active in a given county each with agents approved by the probate court for the purpose of enforcing animal cruelty laws.

In the first instance, the duty to seize and impound dogs resides in the county commissioners. 1994 Op. Att'y Gen. No. 94-086. To this end, R.C. 955.15 provides that "[t]he board of county commissioners shall provide nets and other suitable devices for the taking of dogs in a humane manner, provide a suitable place for impounding dogs, make proper provision for feeding and caring for the same, and provide humane devices and methods for destroying dogs." Furthermore, it is incumbent upon the county commissions to appoint a dog warden to enforce laws concerning the registration of dogs, cruelty to animals, and other laws related to dogs. R.C. 955.12. Only a duly appointed warden may seize stray dogs without a showing of neglect. 1986 Op. Att'y Gen. No. 86-055.

R.C. 955.15 also provides that if there is located within the county a society for the prevention of cruelty of animals that has suitable facilities and a willingness to accept animals for care and confinement, the county commissioners need not operate a dog pound. As stated by my predecessor "the duty of the dog warden to deliver dogs to the humane society shelter is dependent upon the determination of the county commissioners that the shelter and related services are suitable and upon the willingness of the humane society to enter into a contract to make the shelter and services available." 1990 Op. Att'y Gen. No. 90-107, at 2-474. However, while R.C. Chapter 959 establishes parameters for the relationship between the county and the local humane society, nowhere in that chapter is an association for the prevention of cruelty to animals defined. The establishment of humane societies is governed by R.C. Chapter 1717.

Specifically, R.C. 1717.05 provides for the formation of a county humane society and states: "A society for the prevention of acts of cruelty to animals may be organized in any county by the association of not less than seven persons." The General Assembly has seen fit to legislate concerning humane societies in a general manner, leaving specific decisions to the local society so long as those decisions comply with the statutory objective to teach humane principles and enforce cruelty laws. R.C. 1717.02; 1994 Op. Att'y Gen. No. 94-018. There is no expressed grant of authority within R.C. Chapter 1717 to a county society to perform specifically delineated acts. However, the plain language of R.C. 1717.05 sets forth two criteria for the formation of the society. It must exist within the bounds of a county and it must be comprised of at least seven people. Nowhere in R.C. Chapter 1717 is there a requirement that only one society may exist within a given county.

It has been suggested that the singular language of R.C. 1717.05 implies an exclusivity requirement. However, R.C. 1.43(A) specifically provides that "[t]he singular includes the plural, and the plural includes the singular." Specific singular words should not be read out of context but rather, the entire statutory scheme should be read together to determine legislative intent. *See In re Petition to Annex 320 Acres to the Village of S. Lebanon*, 64 Ohio St. 3d 585, 597 N.E.2d 463 (1992). Furthermore, R.C. 955.15 provides that "[t]he board may designate and appoint any officers regularly employed by *any* society organized under [R.C. 1717.02 - 1717.05]...to act as county dog wardens or deputies." (Emphasis added.) This statute is phrased in the plural and implies that the county board of commissioners may choose from among various county humane societies if they so desire to select such officer as a warden or deputy. Statutes that speak to the same subject should be construed together and harmoniously to give full effect to each. *Bobb v. Marchant*, 14 Oh. St. 3d 1, 469 N.E.2d 847 (1984). As such, R.C. 1717.05 cannot be read restrictively in the singular and still be harmonized with related provisions. I find further support for this conclusion in R.C. 1717.13 which permits any person to take possession of an animal when necessary for its protection. This evidences an overriding intent to protect animals which would be inappropriately constrained by adding the requirement that only one society could exist in any county. Therefore, there may exist more than one society for the prevention of cruelty to animals active in a county.

The second part of your question concerns the appointment of agents by the respective humane societies. The appointment of agents to enforce cruelty laws is governed by R.C. 1717.06 which provides in part:

A county humane society organized under [R.C. 1717.05] may appoint agents, who are residents of the county or municipal corporation for which the appointment is made, for the purpose of prosecuting any person guilty of an act of cruelty to persons or animals.... If the society exists outside a municipal

corporation, such appointments shall be approved by the probate judge of the county for which they are made.

Having concluded that more than one humane society may be formed within a county it necessarily follows that each society could appoint its own agents. The Supreme Court has had occasion to interpret R.C. 1717.06 within the context of agents appointed by the probate court. In *State ex rel. Coshocton Humane Soc'y v. Ashman*, 90 Ohio St. 200, 107 N.E. 337 (1914) the court held that it is within the province of the probate court to determine the qualifications of the persons selected by the society to serve as agents as well as the necessity of the services provided by the agents within a given county. The court subsequently reaffirmed this holding in *State ex rel. Diehl v. Colwell*, 123 Ohio St. 535, 176 N.E. 117 (1931) and further held that the probate judge possesses the discretion to determine if the services of any given agent are still necessary. Consequently, in a situation such as you describe, more than one society may appoint agents and it is then left to the discretion of the probate court, during the approval process, to determine if a necessity exists that would support multiple agents. *See also* 1985 Op. Att'y Gen. No. 85-050.¹

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. There may exist more than one society for the prevention of cruelty to animals within a county.
2. It is within the province of the probate court to determine the qualifications of the persons selected by a humane society to serve as agents as well as the necessity of the services provided by the agents within a given county.

¹ While multiple agents working for distinct societies may exist within a given county, this does not imply that the county must support the various societies. R.C. 1717.07 provides that "[n]ot more than one such agent in each county shall receive enumeration from the board under this section." The language of this section suggests that the General Assembly envisioned multiple agents and possibly multiple societies but sought to limit the county's financial responsibility. Additionally, R.C. 955.27 provides that the county commissioners "may" pay excess monies to a humane society from the dog and kennel fund. In so doing, this vests commissioners with discretion over whether any funds would be disbursed over and above that paid to the agent described in R.C. 1717.07.