

**OPINION NO. 95-021****Syllabus:**

A suitable place for impounding dogs, for purposes of R.C. 955.15, must, at a minimum, be a place where it is possible to keep impounded dogs for the periods of time required by law, to provide care for the dogs in a manner that does not constitute cruelty to animals as defined at R.C. 959.13 and R.C. 1717.01(B), and when necessary, to provide for the humane destruction of dogs by a method consistent with R.C. 955.16(F).

---

**To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio**  
**By: Betty D. Montgomery, Attorney General, August 30, 1995**

You have requested an opinion regarding the definition of the term "suitable place," as used in R.C. 955.15, governing the impoundment of dogs. The pertinent provision of R.C. 955.15 states:

The 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. (Emphasis added.)

R.C. 955.15 further provides that the board of county commissioners need not furnish a dog pound in counties in which a society for the prevention of cruelty to children and animals maintains "an animal shelter suitable for a dog pound" and that the board may employ officers of such a society as dog warden or deputies, if the society owns or controls "a suitable place for keeping and destroying dogs." Thus, R.C. 955.15 requires that a "suitable place" be provided for a dog pound, either directly by the board of county commissioners or through a society for the prevention of cruelty to children and animals.

The characteristics of a "suitable place" are not defined by statute and I am aware of no technical or specialized meaning of the phrase "suitable place." Accordingly, this phrase must be "read in context and construed according to the rules of grammar and common usage." R.C. 1.42; *Morgan v. Ohio Adult Parole Auth.*, 68 Ohio St. 3d 344, 346, 626 N.E.2d 939, 941 (1994) ("[w]ords used in a statute must be taken in their usual, normal or customary meaning").

A place is "suitable" when it is "fit and appropriate for the end in view." *Black's Law Dictionary* 1434 (6th ed. 1990); see also *Webster's New World Dictionary* 1424 (2nd college ed. 1984) ("suits a given purpose, occasion, condition, propriety, etc.; fitting, appropriate, apt").

A determination of what is suitable thus requires the exercise of judgment with respect to the needs presented by the purpose to be achieved. I have found no authorities addressing what constitutes a suitable dog pound for purposes of R.C. 955.15. A similar "suitability" standard is imposed by R.C. 3709.34, however, which requires a board of county commissioners to

provide suitable quarters for a general health district. One of my predecessors explained the obligations of the board of county commissioners under that statute as follows:

In the discharge of its mandatory duty to furnish suitable quarters to the general health district, the board of county commissioners is given the discretion to determine what is suitable. The exercise of discretion may, of course, be judicially challenged by the general health district should the board of health be of the opinion that the quarters provided are so unsuitable as to prevent the discharge of its mandatory duties. The commissioners' decision will be overturned, however, only upon a showing of an abuse of discretion. *See generally State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64, 119 N.E. 136 (1917) [analyzing the commissioners' duty to provide a suitable place for holding court].

... At a minimum, suitable quarters would encompass that which is necessary to enable the board of health to fulfill the mandatory duties of a general health district.

1985 Op. Att'y Gen. No. 85-003, at 2-8 and 2-9.

Thus, with respect to a dog pound, the board of county commissioners has discretion to determine what is suitable, so long as the place provided has, at a minimum, the features necessary to enable the county or its officers and agents to fulfill their mandatory duties with respect to the impoundment of dogs.

Pursuant to R.C. 955.12, the county dog warden and his deputies are required to seize and impound "all dogs found running at large and all dogs ... found not wearing a valid registration tag." R.C. 955.12 and R.C. 955.16 establish mandatory holding periods for such impounded dogs to allow time for redemption of the dogs by their owners. Pursuant to these requirements, a pound must be capable of keeping dogs for periods of time ranging from three to sixteen days. *See* R.C. 955.12; R.C. 955.16(A). In some instances, a pound may be required to keep a dog for a longer period of time. A court may issue an order pursuant to R.C. 955.12 for seizure of a dog that the dog warden believes is being treated inhumanely. Such animals are ordinarily kept until the resolution of charges against the owner pursuant to R.C. 959.13 for cruelty to animals.

R.C. 959.13, which establishes the offense of cruelty to animals, states in pertinent part:

(A) No person shall:

(1) Torture an animal, deprive one of necessary sustenance, ... or impound or confine an animal without supplying it during such confinement with a sufficient quantity of good wholesome food and water;

(2) Impound or confine an animal without affording it, during such confinement, access to shelter from wind, rain, snow, or excessive direct sunlight if it can reasonably be expected that the animal would otherwise become sick or in some other way suffer .... For the purpose of this section, shelter means a man-made enclosure, windbreak, sunshade, or natural windbreak or sunshade that is developed from the earth's contour, tree development, or vegetation.

....

(4) Keep animals other than cattle, poultry or fowl, swine, sheep, or goats in an enclosure without wholesome exercise and change of air ....

A definition of "torture," for purposes of R.C. 959.13(A)(1), is found at R.C. 1717.01, which states in pertinent part:

As used in sections 1717.01 to 1717.14, inclusive, of the Revised Code, and in every law relating to animals:

....  
(B) "Cruelty," "torment," and "torture" include every act, omission, or neglect by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief ....  
(Emphasis added.)

The conditions prohibited by R.C. 959.13 constitute grounds for removal of an animal from its owner pending adjudication of the charges, and, upon a conviction under R.C. 959.13, the court may order an animal that has been so removed to be forfeited and sold. R.C. 959.99(D). It follows that the place to which the animals are removed must, at a minimum, be a place where it is possible to care for the animals in a manner that does not constitute cruelty as defined at R.C. 959.13 and R.C. 1717.01(B). Stated affirmatively, the facility must be a place where it is possible to provide the impounded dogs with a sufficient quantity of good wholesome food and water; access to shelter from wind, rain, snow, or excessive direct sunlight; wholesome exercise and change of air; and freedom from unnecessary pain or suffering.

The case of *State v. Barton*, No. 77AP-789 (Ct. App. Franklin County June 13, 1978) provides a useful example of conditions that constitute cruelty to animals, in violation of the above stated standards. In *Barton*, the court upheld the conviction of the director of the local humane society on charges, brought under R.C. 959.13, that he had "allowed dogs and cats [in the society's animal shelter] to endure unnecessary or unjustifiable pain or suffering as a result of overcrowded, filthy cages, sick and injured animals being neglected for unreasonable periods of time without treatment or euthanasia, and animals being euthanized in an inhumane manner." Slip op. at 11. The suitability of the facility for purposes of R.C. 955.15 was not an issue in *Barton*. Nonetheless, since the conditions described in *Barton* constitute cruelty to animals, it follows that if such conditions are caused by the characteristics of the facility itself, *i.e.*, if the facility itself is such that it prevents the provision of adequate care, that facility is not a "suitable place for impounding dogs," as required by R.C. 955.15.

As noted in *Barton*, one aspect of adequate care is the ability to euthanize dogs when necessary. R.C. 955.15 requires the board of county commissioners to provide, in addition to a suitable place for impoundment, "humane devices and methods for destroying dogs." R.C. 955.16(F), which prohibits the use of high altitude decompression chambers, further clarifies that dogs may only be destroyed by "a method that immediately and painlessly renders the dog initially unconscious and subsequently dead." Thus a facility the characteristics of which prevent the humane euthanization of dogs as defined at R.C. 955.16(F) is not a suitable place for impounding dogs as required by R.C. 955.15.

It is therefore my opinion that a suitable place for impounding dogs, for purposes of R.C. 955.15, must, at a minimum, be a place where it is possible to keep impounded dogs for the periods of time required by law, to provide care for the dogs in a manner that does not constitute cruelty to animals as defined at R.C. 959.13 and R.C. 1717.01(B), and when necessary, to provide for the humane destruction of dogs by a method consistent with R.C. 955.16(F).